

## 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

April 2011 Report 2010-119



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Elaine M. Howle  
State Auditor  
Doug Cordiner  
Chief Deputy

# CALIFORNIA STATE AUDITOR

## Bureau of State Audits

555 Capitol Mall, Suite 300

Sacramento, CA 95814

916.445.0255

916.327.0019 fax

[www.bsa.ca.gov](http://www.bsa.ca.gov)

April 7, 2011

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The Governor of California  
President pro Tempore of the Senate  
Speaker of the Assembly  
State Capitol  
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the California State Auditor presents this audit report concerning the Commission on Teacher Credentialing (commission) educator discipline process with a general focus on the timelines of its review of allegations of misconduct against credential holders.

This report concludes that, according to 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, 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.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

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## Summary

### Results in Brief

The Commission on Teacher Credentialing (commission) was created in 1970 with the responsibility to ensure excellence in education by establishing high standards for the preparation and credentialing of public school educators. In addition to issuing teaching credentials, the commission issues credentials, certificates, and permits for positions such as school administrators, activity supervisors, and educators working in specialized teaching areas. The law requires the commission to appoint the Committee of Credentials (committee), a seven-member body, to review allegations of misconduct on credential holders and applicants and make recommendations of adverse actions to the commissioners. The Division of Professional Practices (division) investigates charges of misconduct or unprofessional conduct against credential holders and applicants on behalf of the committee and commissioners. Such investigations are intended to reveal whether the misconduct renders an individual unfit for the duties authorized by the credential.

We expected to find that the division uses management practices that enable it to efficiently and effectively resolve cases involving holders of or applicants for teaching credentials. To manage its caseload and prevent backlogs, we expected that the division would employ control systems and procedures that include a management information system that allows it to track the status of cases requiring mandatory adverse action against a credentialed teacher. This system would need to accurately and completely track all cases received, including the type of case, the length of time a case has spent in each stage of review, and the person responsible for the case. We also expected to find that the commission expeditiously addresses cases in which criminal conduct is alleged or for which it has received a notification of criminal activity from the California Department of Justice (Justice). Importantly, we expected that these control systems and procedures would prevent backlogs, which create delays in the reviewing and processing of reported misconduct and increase the risk that management's policies and procedures will not be followed.

However, the commission's executive director acknowledged that, as of the summer of 2009, the division had accumulated a backlog of about 12,600 unprocessed reports of arrest and prosecution (RAPs, commonly known as RAP sheets), which it receives from Justice. According to the manager of the division's Support Section (manager), the division has had 3,000 to 4,000 allegations in process (about a 10-month workload) since he began working there in 2005. The division evaluates the RAP sheets to determine

### Audit Highlights . . .

*Our review of the Commission on Teacher Credentialing (commission) revealed the following:*

*As of the summer of 2009, according to the commission's management, the commission's Division of Professional Practices (division) had accumulated a backlog of 12,600 unprocessed reports of arrest and prosecution (RAP sheets)—almost three times a typical annual workload.*

*These conditions appear to have significantly delayed processing of alleged misconduct and potentially allowed educators of questionable character to retain a credential. Our case review revealed the following concerning the division:*

- » *For nearly 40 percent of the cases we reviewed, it took more than 80 days to open a case after receiving a report of misconduct and nearly two years in one case and three years in another case.*
- » *It did not effectively track the status of cases that, if the credential holder is convicted of the crime charged, require mandatory revocation of the credential—it took one and a half months and six months, respectively, in two cases to revoke the credential after receiving court documents.*
- » *It relied on the prosecution of criminal charges and delayed in seeking additional information from school districts, witnesses, and alleged victims, thus jeopardizing its ability to obtain information needed to investigate the misconduct.*

*continued on next page . . .*

*To streamline the Committee of Credentials' (committee) processing of pending cases, the division uses its discretion to close cases or not open cases for which it believes the committee would choose not to recommend disciplinary action against the credential holder. However, we do not believe the committee can lawfully delegate this discretion to the division.*

*The commission's database that tracks cases the division reviews and investigates does not always contain complete and accurate information regarding cases of reported misconduct.*

- » *We found discrepancies between the information in the database and paper files.*
- » *The commission does not have procedures to account for all reports of educator misconduct it receives.*
- » *Recently implemented reports lack the information necessary to make them efficient case-tracking and management tools.*

*Because the commission does not have a complete set of approved hiring procedures and did not consistently document justification for hiring a particular candidate, it is vulnerable to allegations that its hiring decisions are unfair and that employment opportunities are not afforded equally to all candidates.*

whether the reported criminal activity could potentially affect the credential holder's or applicant's fitness for the duties authorized by the credential. The 2009 number represents nearly three times the number of RAP sheets and other reports of educator misconduct the division typically processes each year.

According to the manager, the backlog of unprocessed RAP sheets grew as a result of several factors, including vacancies due to employee turnover, the time needed to train replacement workers, furlough days for workers due to the State's budget deficits, ineffective and inefficient processes, and the lack of an information system capable of effectively tracking the division's workload. According to the manager, the division launched the "RAP project" in August 2009 to process the backlog of RAP sheets, which is still in progress.

We noted several conditions that appear to have been connected to the poor practices that led to the workload backlog. Specifically, we found that in some instances significant periods of time elapsed between critical steps in the division's process of reviewing reported misconduct. For example, for 11 of the 29 cases we randomly selected for review, the division took more than 80 days to open a case after receiving a report of misconduct, with one taking nearly two years and another taking nearly three years. The manager cited the large number of reports of misconduct, small number of staff, and a need to prioritize the cases as the cause of the delayed processing.

The division's delays in investigating reported misconduct 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.

In addition, the division has not always effectively tracked the status of cases that, if the credential holder is convicted of the crime charged, require mandatory revocation of the credential. Specifically, for six of the 23 cases we randomly selected for review that involved possible mandatory revocation, the commission's Credentialing Automation System Enterprise (database) did not contain a record of the current activities on the case. For three other cases involving potential mandatory revocation, the division took one and a half and six months, respectively, to revoke the individual's credential after receiving court documents in two instances and did not seek critical information regarding the conviction of a third individual for five months after receiving notification of the conviction.

Further, the division has not always pursued all available sources of information regarding its cases, relying instead on the prosecution of criminal charges. These delays in seeking additional information from school districts, witnesses, or alleged victims can jeopardize the division's ability to obtain the information needed to investigate the misconduct if the prosecution of criminal charges does not result in a conviction because students who are victims of misconduct graduate to other schools and teachers and administrators change jobs or retire.

The division has also not always effectively processed the RAP sheets it receives from Justice. For example, we could not locate 18 of 30 randomly selected RAP sheets we reviewed in the commission's database because it did not record an adequate level of detail regarding the offense reported to allow for a positive match. In addition, the division has not always notified Justice of individuals in whom it is no longer interested, causing unnecessary work to review further RAP sheets for these individuals. The analyst who processes the RAP sheets stated that the division was seeking a method to return the RAP sheets to Justice electronically; however, in March 2011 it began mailing the RAP sheets back to Justice.

Although the division has taken steps to improve its processing of reports involving educator misconduct, more improvement is needed. For example, the commission's strategic planning does not address important challenges the division faces in meeting its responsibilities. One of these challenges is that, according to the assistant general counsel, the division receives more reports of misconduct than the committee can review each month. In addition, the division has not collected the workload data needed to assist in determining the required level of staff to meet the workload.

In its efforts to eliminate current and future workload backlogs, the division implemented some measures to streamline the actions the committee takes to determine whether probable cause exists for adverse action against credential holders accused of misconduct. Specifically, the division will close cases, or will decide not to open cases, if it believes the committee would choose not to recommend disciplinary action against the credential holder. However, we question whether the division has the authority under the law to make these decisions.

Moreover, the division has not developed comprehensive written procedures for reviewing reported misconduct. Such procedures are necessary to inform division staff of management's policies and procedures, serve as reference material, and provide a training tool for new employees. Importantly, the database the division uses to track the cases it reviews and investigates does not always



contain complete and accurate information regarding cases of reported misconduct. Specifically, as part of our assessment of the reliability of the commission's database, we conducted accuracy testing. We determined that the database is not sufficiently reliable to be used to identify the number of some reports of misconduct, the actions taken by the committee, the recommendations for adverse action, and the number of days between the date that division staff opened and closed a case for cases the committee did not review that were opened during the period of January 2007 through June 2010. In addition to our accuracy testing, we found in other samples we tested that there were discrepancies between the information in the database and the associated paper files. We identified five case files where there were no documents in the paper file to support an entry in the database, such as the division's request for additional information about a case; another case where the division issued document request letters, but the requests were not noted in the database; 18 dates recorded in the database that were one month or more after the division actually received the paper document; and the division could not locate paper files for two cases we reviewed. Further, the division has not developed and implemented procedures to account for all reports of educator misconduct it receives.

Although the division recently implemented reports and processes intended to better manage its workload and to track cases and reports of misconduct, the reports lack the information necessary to make them efficient case-tracking and management tools. As such, they do not always address the problems we identified during our review. For example, its reports do not include the reasons for case delays, and thus effective oversight of the cases listed in the reports requires time-consuming research of paper case files to identify their status.

Familial relationships among commission employees appear to have a negative impact on many employees' perceptions of their workplace. For example, more than 40 percent of the employees who responded to our survey indicated that familial relationships or employee favoritism compromised the commission's hiring and promotion practices. When we reviewed the commission's hiring procedures, we found that it does not have a complete set of approved hiring procedures that it uses consistently, but instead uses several state hiring policies, guidelines, and procedures in addition to its own hiring procedures, which have been in draft form since 2007. In addition, managers and human resources staff did not consistently document each of the steps in the hiring process or their justification for selecting a particular candidate. Consequently, the commission is vulnerable to allegations that its hiring decisions are unfair and that employment opportunities are not afforded equally to all candidates.

The commission's processes for filing Equal Employment Opportunity (EEO) complaints and grievances are designed to mitigate the threat of retaliation by allowing employees to file EEO complaints or grievances with designated personnel and outside agencies instead of their direct supervisors. However, 43 percent of the commission employees responding to our survey indicated that they would fear retaliation if they were to file an EEO complaint or grievance. Moreover, about 21 percent of the employees who responded to our survey were not aware of the EEO complaint process, and 33 percent were not aware of the grievance process. Thus, we believe the commission could do a better job of informing employees of these processes and explaining the protections they provide.

### **Recommendations**

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.

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.

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.

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.

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.

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.

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.

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.

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:

- 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.

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:

- 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 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.

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:

- 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.

### **Agency Comments**

The commission agrees with most of our recommendations and emphasizes that it takes its role of enforcing professional discipline very seriously while balancing the safety of California school children and the due process rights of educators.

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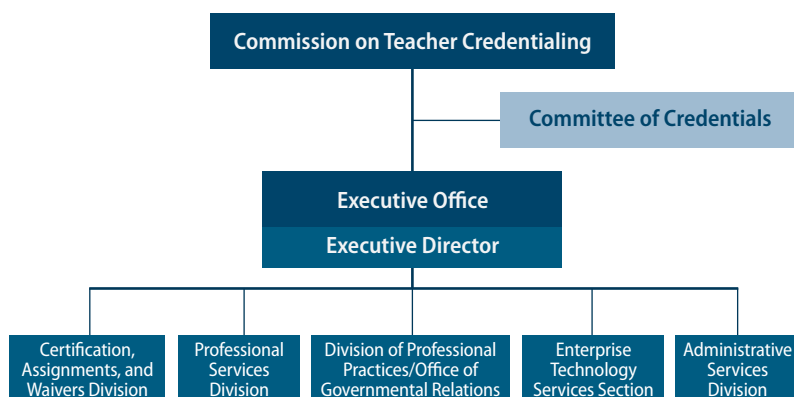
# Introduction

## Background

The Commission on Teacher Credentialing (commission) was created in 1970 with the responsibility to ensure excellence in education by establishing high standards for the preparation and licensing of public school educators. Previously, the California Department of Education issued licenses, known as credentials, to teachers, but the Legislature believed that the public would be better served by having a separate state entity issue teaching credentials. In addition to teaching credentials, the commission issues credentials, certificates, and permits for positions such as school administrators, activity supervisors, and educators working in specialized teaching areas.

The commission consists of 19 individuals, 15 of whom are voting members. The governor, with the advice and consent of the State Senate, appoints 14 of the voting members; the superintendent of public instruction or a designee is the remaining voting member. The Regents of the University of California, the Trustees of the California State University, the California Postsecondary Education Commission, and an association representing independent colleges and universities each provide one of the nonvoting members. State law requires the commissioners to meet as often as the commission chair and the executive committee determines to be appropriate and necessary to accomplish the commission's duties, but at least once per quarter. During 2010 the commissioners met eight times. The commissioners also appoint an executive director who is responsible for the commission's daily operations. According to the commission's records, as of August 2010, it had 188 positions. Figure 1 shows the organization of the commission.

**Figure 1**  
Organization of the Commission on Teacher Credentialing



As shown in the figure, the commission consists of four main divisions and one section. Among these, the Professional Services Division develops licensure standards, develops and implements credential examinations, and administers teacher development programs designed to help prospective teachers. The Certification, Assignments, and Waivers Division (certification) evaluates and processes applications for credentials, permits, certificates, and waivers to

determine whether it should authorize educators to serve in public schools. Certification is responsible for processing over 250,000 applications annually and reviews applicants for criminal records and self-disclosed incidents of misconduct. When it discovers these types of incidents, it refers the applications to the Division of Professional Practices (division) for review and investigation.

### Members of the Committee of Credentials (Text Box No. 1)

- Full-time certified classroom teacher in the public elementary schools with not less than five years of classroom experience (one member).
- Full-time certified classroom teacher in the public secondary schools with not less than five years of classroom experience (one member).
- Certified administrative employee in the public schools (one member).
- Member of the governing board of any school district (one member).
- Representatives of the public (three members).

Source: California Education Code, Section 44240.

### The Committee of Credentials and the Division

The commission appoints the members of the Committee of Credentials (committee)—a seven-member body. The commission sets the terms of the appointments, not to exceed two years. The committee works under the supervision of the commission and comprises representatives from the education community and the general public, as shown in text box no. 1. According to the commission's policy manual, the committee shall meet in Sacramento at such times as it considers necessary to perform its duties. The committee currently meets once a month to review allegations of misconduct and to determine the relationship between the alleged misconduct and the credential holder's fitness, competence, or ability to effectively perform the duties authorized by the credential. The factors the committee is to use in making these determinations include those shown in text box no 2. During its meetings, the committee is charged with determining whether the reported misconduct affects an applicant's or credential holder's fitness or competence to effectively perform the duties authorized by the credential, and determines whether there is probable cause for an adverse action on the credential. The committee then reports its findings of probable cause and recommendations for appropriate adverse actions to the commissioners. Adverse actions range from private admonishment to revocation or denial of a teacher credential. The commission may adopt the committee's recommendations without further action unless the applicant or credential holder exercises his or her right to appeal. According to the division's management, the committee can review 50 to 60 cases per month.

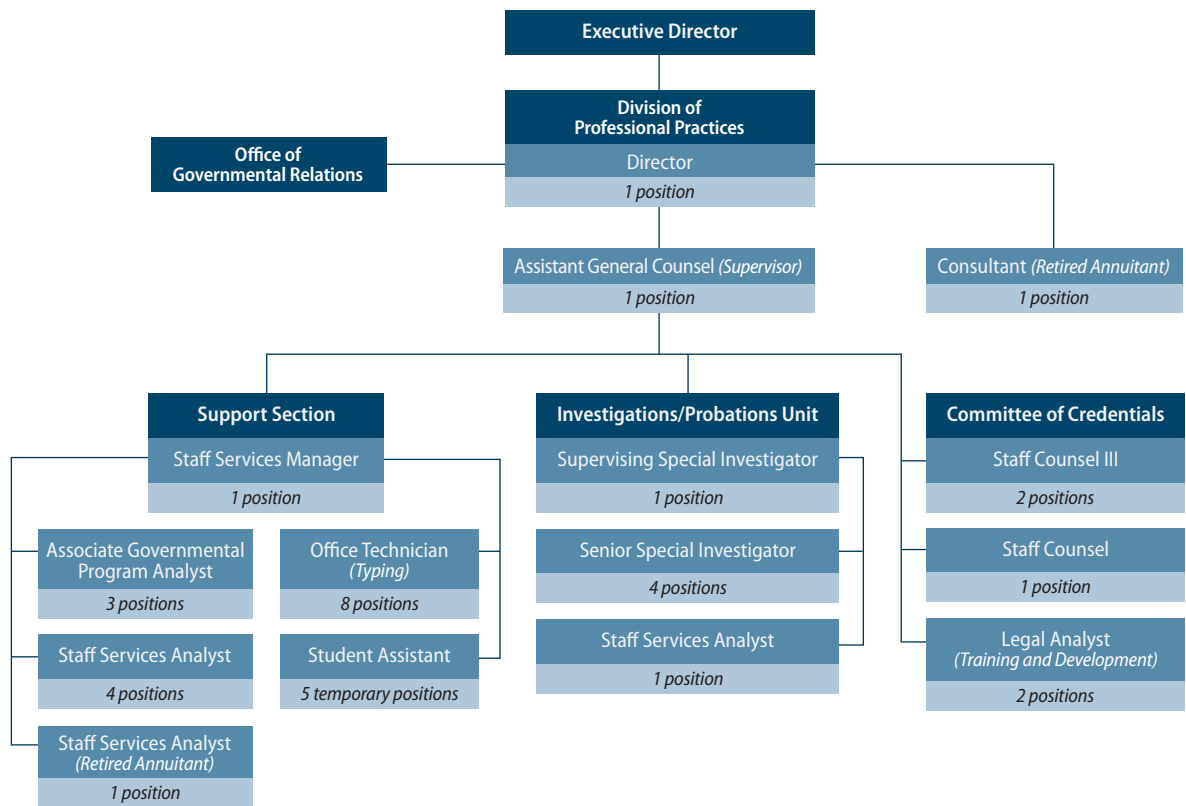
### Factors Involved in the Committee of Credentials' Consideration During Investigation (Text Box No. 2)

- The likelihood that the conduct may have adversely affected students, teachers, or the educational community, and the degree to which they may have been affected.
- The proximity or remoteness in time of the conduct.
- The type of credential held or applied for.
- Any extenuating or aggravating circumstances surrounding the conduct.
- The praiseworthiness or blameworthiness of the motives resulting in the conduct.
- The likelihood of the recurrence of the questioned conduct.
- The extent to which disciplinary action may inflict an adverse impact or chilling effect on the constitutional rights of the people involved or other certified individuals.
- The publicity or notoriety given to the conduct.

Source: Title 5, California Code of Regulations, Section 80302, commonly referred to as the Morrison factors.

The division conducts the investigations of misconduct on behalf of the committee and the commission. Upon receiving reports or allegations of misconduct, the division gathers the documents and testimony necessary to determine probable cause for discipline and a recommendation for an adverse action on the credential, prepares the necessary reports for review, and provides support for any proceedings, such as appeals of committee and commission findings and recommendations. In addition to providing legal assistance on investigations, the division’s attorneys provide legal counsel to the committee. As shown in Figure 2, the division is staffed by 36 positions, including analysts, investigators, student assistants, retired annuitants, and legal counsel.

**Figure 2**  
**Organization Chart for the Division of Professional Practices**



Source: Commission on Teacher Credentialing.

### The Educator Discipline Process

The California Education Code (Education Code) and the commission’s regulations govern the process and standards for investigation of reports of misconduct and for making



### Types of Reports of Misconduct the Commission on Teacher Credentialing Receives Giving the Committee of Credentials Jurisdiction to Begin an Initial Review

- **Self-disclosure:** An affirmative response on an application submitted to the Commission on Teacher Credentialing (commission) regarding any conviction, adverse action on or denial of a license, or any pending investigation into a criminal allegation or pending investigation of a noncriminal allegation of misconduct by a governmental licensing entity, or the failure to disclose any of these items.
- **Criminal misconduct reports:** An official record of the California Department of Justice (reports of arrest and prosecution, commonly known as RAP sheets), a law enforcement agency, a state or federal court, or any other law enforcement agency of this state or another state.
- **Affidavit:** An affidavit or declaration signed by an individual or individuals with personal knowledge of the acts alleged to constitute misconduct.
- **Employer statement:** A statement from an employer notifying the commission that, as a result of or while an allegation of misconduct is pending, a credential holder has been dismissed, has not been reelected, has been suspended for more than 10 days, has been placed on unpaid administrative leave for more than 10 days pursuant to a final adverse employment action, or has resigned or otherwise left employment.
- **Employer notification:** A notice from an employer that a complaint was filed with the school district alleging sexual misconduct by a credential holder, based on evidence presented to the Committee of Credentials in the form of a written or oral declaration under penalty of perjury that confirms the personal knowledge of the declarant regarding the acts alleged to constitute misconduct.
- **Other reports:** A report from a school district, employer, public agency, or testing administrator of a failure without good cause, to fulfill an employment contract or leaving the service of the district without appropriate consent, the misuse of pupil data, false reporting of expenditure data relative to the conduct of any educational program, or subverting or attempting to subvert any licensing examination or the administration of an examination.

Source: California Education Code.

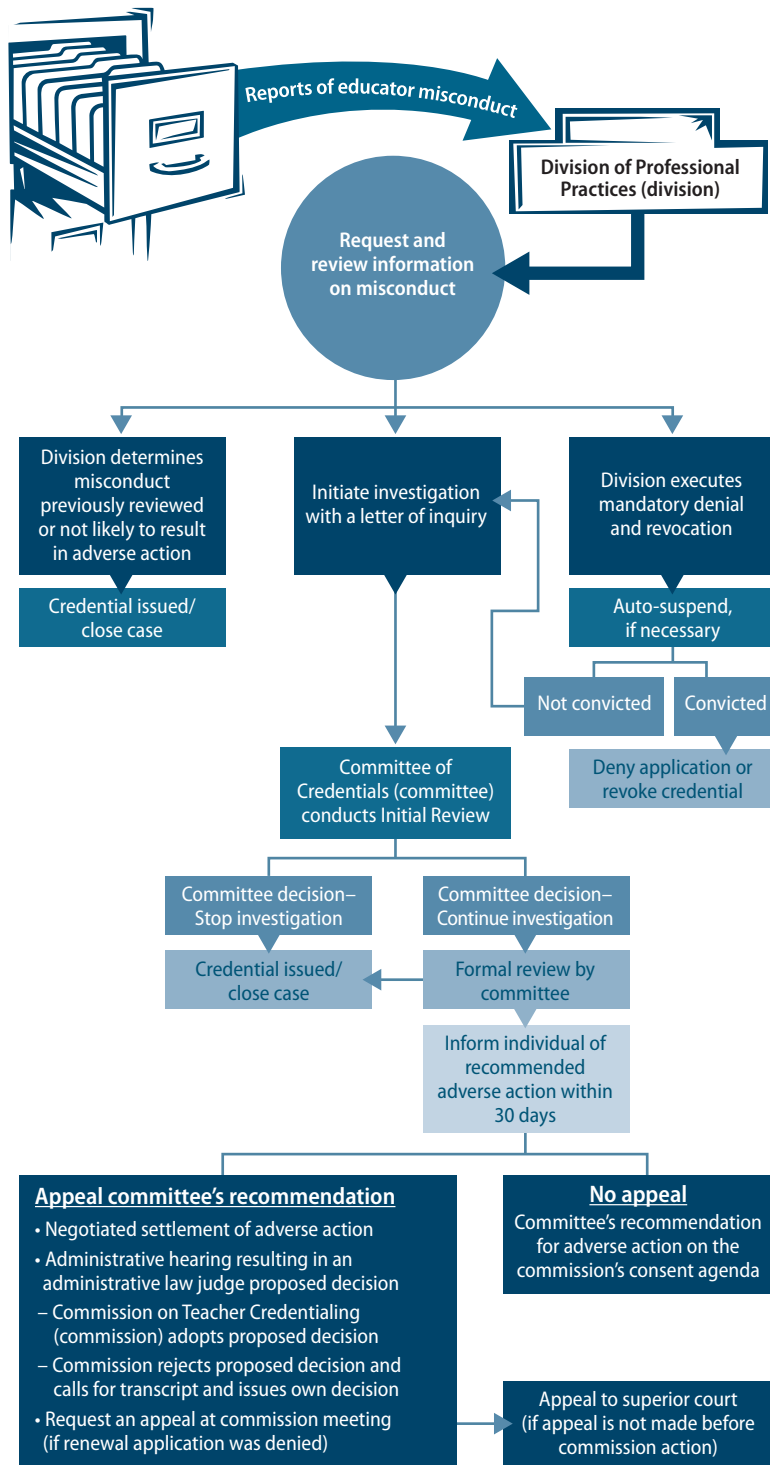
determinations regarding the holder's or applicant's fitness or competence to hold a credential. Generally, an educator may be denied a credential if he or she lacks the qualifications to teach or is otherwise unfit because he or she has, for example, exhibited conduct such as being addicted to intoxicating beverages or controlled substances, moral turpitude, deception or fraud in his or her application for a credential, conviction for a sex or controlled substance offense, or is sufficiently physically or mentally impaired so as to render the individual unfit to perform the duties authorized by the credential, or had a credential revoked in the past or in another state due to such behavior. Figure 3 illustrates the discipline process.

The Education Code gives the committee jurisdiction, or the right to initiate an investigation of reported misconduct, after it receives reports of misconduct as shown in the text box. The commission's regulations contain standards for investigations of reported misconduct.

The Education Code requires that each allegation of misconduct for which a credential holder or applicant may be subject to adverse action shall be presented to the committee. However, according to the committee's meeting minutes from 2002, it delegated to the division the authority to grant credentials and close investigations in cases that the division staff determine are not under the jurisdiction of the committee. Additionally, according to the division's discipline workload report for fiscal year 2009–10, the staff, the chair of the committee, and the executive director discussed strategies to streamline the processing of cases pending review by the committee and decided to give the division the authority to grant applications and close cases for allegations that are under the committee's jurisdiction but that the division determines do not meet the legal criteria for adverse action by the commission.

According to the Education Code and commission regulations, except for certain sexual misconduct, an allegation of an act or omission by a credential holder shall be presented to the committee within four years from the date of the alleged act or omission, or within one year from the date the act or omission should reasonably have been discovered by the commission.

**Figure 3**  
 Commission on Teacher Credentialing's Process for Reviewing and Disciplining Educator Misconduct



Source: Division of Professional Practices.

The division's manager and supervising investigator are responsible for ensuring that division staff handle cases properly, either closing them and granting credentials or preparing them for committee review. Specifically, the division manager oversees the technicians who open cases for educators with official criminal reports and process applications of those with a history of criminal misconduct. He also oversees analysts who prepare letters of inquiry (letters informing a credential holder or applicant that he or she is under investigation) and the confidential investigative reports, which is the report the division prepares for the committee's review of the case. The supervising investigator oversees the division's investigations of incoming school and district notifications, affidavits, and criminal complaints, from receipt to committee review or staff closure. He is also responsible for assigning cases to the analysts who work under the manager.

### **Scope and Methodology**

The Joint Legislative Audit Committee (audit committee) requested the Bureau of State Audits to perform an audit of the commission's educator discipline process, with a general focus on the timelines of the commission's review of allegations of misconduct against credential holders. Specifically, the audit committee asked us to do the following:

- Review and evaluate the commission's policies, procedures, and practices for processing allegations or reports and investigating alleged misconduct by applicants. Determine whether the commission's practices ensure that these allegations or reports are thoroughly addressed in a timely manner.
- Assess the accuracy and completeness of the commission's database as it relates to information on the disciplinary process, focusing on the accuracy of recorded receipt dates on reports and documents. Determine whether changes or adjustments made to the records in the database are adequately supported.
- Determine the number and types of reports, such as reports of criminal convictions from law enforcement agencies or courts, reports from school districts, personal affidavits, self-reports, or licensing actions that were received and processed by the commission.
- Determine whether the commission had any backlog of reports alleging teacher misconduct. If such a backlog exists, identify and evaluate the causes, any relevant trends, and the commission's efforts to address the backlog.

- For allegations reviewed by the committee, determine and analyze the amount of time that elapsed between key steps in the process. Examples of potential key steps include the commission's initial receipt of a report, the division's initial receipt, the initial follow-up with school districts, and any action taken by the commission.
- Determine and evaluate the amount of time that elapsed before the division sought documentation after receiving multiple reports on a single credential holder. Evaluate the division's efforts to investigate school district reports while a criminal matter on the same credential holder was awaiting review.
- Review and assess the following information related to criminal reports received by commission staff:
  - The amount of time that elapsed between the commission's receipt of information from the California Department of Justice (Justice) and Federal Bureau of Investigation and its final action in cases in which the commission must automatically revoke credentials.
  - The amount of time that elapsed between the commission's receipt of information regarding criminal convictions and its requests for further documentation.
  - The consistency with which the commission requested and obtained relevant law enforcement reports. If the commission did not obtain these reports, determine the reason why.
  - The number of allegations involving criminal convictions that were closed without review by the committee and the reasons for the closures.
- Determine the number of recommendations of adverse action made by the committee. In those cases where the committee recommended adverse action, determine how many credential holders and applicants requested an administrative hearing before the commission acted on that recommendation.
- Identify the number of reports and allegations that were not pursued because time-based statutes prevented their further pursuit.

- Determine the number and age of reports and allegations not reviewed by the committee, the reason the reports and allegations were not reviewed by the committee, and whether it followed established policy in reaching these determinations.
- Determine the commission's current policies and practices as they relate to the hiring of family members. Survey commission staff regarding any familial relationships, nepotism, and employee favoritism, and their impact on the commission's hiring practices and the staff's ability to work without fear of reprisal for filing a complaint.

To gain an understanding of the commission's role in educator discipline, we reviewed and evaluated the laws, rules, and regulations significant to the audit objectives. We spoke with staff at the division that support the disciplinary work of the seven-member committee to gain an understanding of its policies, procedures, and practices for processing allegations or reports and investigating alleged misconduct by credential applicants and holders.

As specifically requested by the audit committee and as required by the U.S. Government Accountability Office whose standards we follow, we assessed the sufficiency and appropriateness of computer-processed information. Therefore, we assessed the reliability of the commission's Credentialing Automation System Enterprise (database) data, and found significant errors that prevent us from making conclusions based solely on the data. Specifically, we performed data-set verification procedures and electronic testing of key data elements, and assessed the accuracy of the commission's database. Because the commission's database records data on various types of reports of misconduct, which are stored in disparate tables within the database, we expanded our accuracy testing to pull several samples each focusing on a specific type of misconduct report. We did not perform completeness testing because reports of misconduct are sent in from various employers, public agencies, testing administrators, and school districts throughout the State making such testing impractical.

We assessed the commission's database for the purposes of selecting samples of cases used in our analysis and to identify the number of reports of misconduct such as RAP sheets, National Association of State Directors of Teacher Education and Certification (NASDTEC) notifications, school reports, affidavits, and testing agency misconduct reports; actions taken by the committee; recommendations for adverse action; and the number of days between the date that division staff opened and closed a case for cases the committee did not review that were opened during the period January 2007 through June 2010. We identified no issues

when performing data-set verification procedures and our electronic testing of key data elements found that the data contains logical information in the key fields needed for our analysis. However, we identified several accuracy errors. For accuracy testing, we randomly selected a sample of 28 records of case activities, 29 RAP sheets sent by the Justice and recorded by the commission for current credential holders, 13 RAP sheets sent by Justice and recorded by the commission for credential applicants, and 34 reports sent by the NASDTEC and recorded by the commission. We traced key data elements from these samples to the source documentation in either the commission's case files or electronic NASDTEC reports. We found no errors in our testing of 29 RAP sheets for current credential holders or in our testing of 13 RAP sheets for credential applicants. We also found no accuracy errors in the key fields related to NASDTEC reports, but found several errors in the key fields related to case activities. Specifically, in our sample of 28 case activities, we found three errors in the data field that tracks the date an activity begins and the field that describes which activity is being performed, such as a request for court documents or Department of Motor Vehicles' records, and two errors in the field that describes the action that needs to be taken, such as opening a case.

Because we were not able to test the completeness of the commission's database, we determined that the commission's database is of undetermined reliability for the purposes of selecting samples of cases used in our analysis, and to identify the number of reports of misconduct from RAP sheets and NASDTEC reports. Additionally, due to the errors noted in our testing for accuracy, we found the commission's database is not sufficiently reliable to identify the number of affidavits, school reports, testing agency misconduct reports, actions taken by the committee, recommendations for adverse action, and the number of days between the date that division staff opened and closed a case for cases the committee did not review that were opened during the period of January 2007 through June 2010.

To determine whether changes or adjustments made to the records in the database are adequately supported, we conducted a review of the controls over such data changes. We had intended to test a sample of changes and adjustments to the data, but the database only recorded the changes made to key fields for the last 48 days of the audit period. Because of this limitation, we instead performed a review of the controls over data changes by interviewing program and technical staff, attempting to obtain the division's change control policies and procedures, testing a judgmental sample of access rights for selected employees, and by reviewing the deletions to the database. As discussed further in Chapter 2, we identified significant weaknesses in the commission's controls for deleting records from its database. In addition, to ensure that the access

controls are working as intended, we tested a judgmental sample of five employees' access to 30 data elements and found that the access controls appropriately limited the users' access to view or alter data.

Using the commission's database, we attempted to determine the number and types of reports the commission received and processed for cases opened during the period from January 2007 through June 2010, the number of allegations involving criminal convictions that were closed without review by the committee, the number of reports and allegations not reviewed by the committee, and the number of recommendations of adverse action made by the committee. We provide this information in Appendix A as well as an explanation as to the reasons we were unable to provide all of the information the audit committee requested.

To determine whether the commission had any backlog of reports and the reasons such a backlog existed, we interviewed the division's management. We also reviewed internal reports generated by the commission.

To identify and analyze the amount of time that elapsed between key steps in the process from the initial receipt of a report to any actions taken by the commission, including requesting documentation from entities such as school districts and courts, we attempted to use the commission's database. However, we could not rely on the data included in the database because of errors in the date and activities field we described earlier. In addition, the commission does not always record in the database the reports of misconduct it receives. As an alternative, we selected random samples of the division's cases from its database and, using information contained in the database and the paper files, we determined the amount of time that had elapsed between certain steps. We also reviewed additional information contained in the commission's database and the paper files, and interviewed the division's management and staff to obtain an understanding of the reasons for long time lapses or any irregularities we identified during our testing. As part of this review, we also determined whether the commission requested and obtained relevant law enforcement reports and, if it did not obtain these reports, the reasons why by reviewing the case files and interviewing division staff.

To identify the number of reports and allegations that were not pursued because time-based statutes prevented their further pursuit, we attempted to use information from the commission's database. However, the database did not include any characteristics that would identify time limitations on the commission's jurisdiction over the cases. As a result, we could not identify the number of reports and allegations not pursued because of time-based statutes, as requested. Instead, we focused on the division's procedures to ensure that cases are processed within the time limitations of the statutes.

To determine and analyze the reasons that reports and allegations were not reviewed by the committee, and whether the division followed established policy in reaching these determinations, we obtained its spreadsheet that identified misconduct reports not reviewed by the committee and generally closed by division staff during the period September 1, 2010, through October 31, 2010. These cases include some the division opened for review and investigation from 2007 through mid-2010.

Finally, to determine the commission's current policies and practices as they relate to the hiring of family members, we reviewed various state laws and guidelines and practices as well as the commission's own hiring guidelines and its nepotism policy. We also discussed the commission's hiring process with the director of the administrative services division and the manager of the office of human resources. To determine the prevalence of familial relationships, nepotism, and employee favoritism and their impact on the commission's hiring practices and the staff's ability to work without fear of reprisal for filing complaints, we surveyed 188 commission employees working as of August 31, 2010. Appendix B lists the survey questions and aggregates certain responses. We received 136 responses, or a response rate of 72 percent. Further, commission employees responding to our survey named 24 commission employees who they believed were related to other commission employees or who they perceived had received special treatment by the commission. We selected a sample of 10 of these employees to determine whether the commission appropriately appointed, promoted, or transferred them by reviewing the commission's personnel records. Because employees responding to our survey expressed concerns regarding the commission's administration of exams, we also selected a sample of three eligibility exams the commission administered to establish an eligibility list. To determine whether the commission properly administered the exams, we reviewed state laws and regulations pertaining to the state civil service exam process and reviewed the commission's testing materials, interview notes, and other personnel documents relating to the exams.

To assess whether the commission's grievance and Equal Employee Opportunity (EEO) complaint processes are designed to reduce the fear of retaliation, we reviewed the commission's policies and procedures. To understand the quantity and nature of grievances and EEO complaints, we also obtained the commission's summary of grievances and EEO complaints filed over roughly the last two years.



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## Chapter 1

### THE DIVISION OF PROFESSIONAL PRACTICES' PROCEDURES FOR INVESTIGATING REPORTED MISCONDUCT HAVE RESULTED IN WORKLOAD BACKLOGS AND DELAYED OR QUESTIONABLE PROCESSING

#### Chapter Summary

In order for the Division of Professional Practices (division) of the Commission on Teacher Credentialing (commission) to meet its responsibilities, we expected to find that it uses management practices that enable it to efficiently and effectively review reported misconduct by holders of or applicants for teaching credentials. We also expected to find that the division reviews reported misconduct promptly, thus keeping backlogs to a minimum. Backlogs can create delays in processing reports of serious misconduct and increase the risk that the cases would not be processed in accordance with management's policies and directives. To help ensure that backlogs do not develop or are quickly identified and mitigated, we expected the division to have a management information system that allows it to track the status of cases requiring mandatory adverse action against a credentialed teacher. This system would need to accurately and completely track all cases received, including the type of case, the length of time a case has spent in each stage of review, and the person responsible for the case. We also expected to find that the commission expeditiously addresses cases in which criminal conduct is alleged or for which it has received a notification of criminal activity from the California Department of Justice (Justice).

However, the commission's executive director acknowledged that the division had accumulated a significant backlog of 12,600 unprocessed reports of arrest and prosecution (RAPs, commonly known as RAP sheets) as of the summer of 2009. This number represents nearly three times the number of RAP sheets and other reports of educator misconduct the division typically processes each year. According to the manager of the division's Support Section (manager), the backlog grew as a result of several factors related to staffing, the review process for reports of misconduct, and the division's case-tracking capabilities. According to the manager, the division launched the "RAP project" in August 2009 to process the backlog of RAP sheets, which is still in progress.

We noted several conditions that appear to have been connected to the poor practices that created the backlog. Specifically, we found that in some instances significant periods of time elapsed between critical steps in the division's process of reviewing reported

misconduct. In fact, we found delays in reviewing and investigating reported misconduct which potentially allowed educators of questionable character to retain a credential. In addition, the division has not always effectively tracked the status of cases that, if the credential holder is convicted of the crimes charged, require mandatory revocation of the credential.

Moreover, the division has not always pursued all available sources of information regarding its cases, relying instead on the prosecution of criminal charges. These delays in seeking additional information from school districts, witnesses, or alleged victims can jeopardize the division's ability to investigate the misconduct if the prosecution of the criminal charge does not result in a conviction. Further, the division has not always effectively processed the RAP sheets it receives from Justice. For example, we could not locate some RAP sheets in the commission's Credentialing Automation System Enterprise (database) because the division did not record an adequate level of detail regarding the offense reported.

In its efforts to eliminate this workload backlog and to streamline the process of the Committee of Credentials (committee) to review cases and avoid future backlogs, the division began making discretionary decisions to close reviews of misconduct without presenting the cases to the committee for review. However, we question whether the division has the legal authority to do so.

### **The Division Has Experienced Significant Workload Backlogs**

Significant workload backlogs have delayed and impeded the division's progress in reviewing reported misconduct for possible disciplinary action. Backlogs create delays in processing reports of misconduct and increase the risk that the cases will not be processed in accordance with management's policies and directives. In addition, large backlogs increase the risk that inconsistent and questionable judgments will be made to reduce the backlog.

The manager asserted that the division has continually had 3,000 to 4,000 allegations in process (about a 10-month workload) since he came to work at the division in 2005. However, the workload grew substantially, and the commission's executive director acknowledged the division had accumulated a significant backlog in the summer of 2009 that he characterized as amounting to 12,600 unprocessed RAP sheets. This represents nearly three times the number of RAP sheets and other reports of educator misconduct the division typically processes each year. The commission's executive director reported to the commission that, as of January 20, 2010, this backlog had been reduced to 4,629 documents.

*The division had accumulated a significant backlog in the summer of 2009 amounting to 12,600 unprocessed reports of arrest and prosecution.*

The manager also asserted that the division had reviewed the RAP sheets when received and processed those for which the offenders may have presented a high risk to students. However, as described later in this chapter, we noted instances of delayed processing for reports of misconduct regarding more serious misconduct that originate from sources other than RAP sheets.

According to the manager, one of the factors contributing to the backlog is that the process the division previously used to receive and investigate reports of educator misconduct was inefficient and ineffective. The manager indicated that intake of the reports was channeled through one analyst, who reviewed them and identified the type of processing each report required. However, the analyst was also responsible for many other tasks, including training and coaching other workers. According to the manager, these combined tasks were more than one person could perform effectively.

In addition, the manager indicated that the division's strategy for gathering the information needed to process the reports of misconduct was inefficient and lacked accountability. For example, the division's technicians were responsible for performing certain tasks for case files rather than being assigned responsibility for processing the entire case. Case files were placed in centralized areas, and technicians performed only the tasks for which they were responsible. He indicated that under this system division management had difficulty tracking the progress of investigations and holding individuals accountable for their work.

According to the manager, during the period of growth in the workload backlog, employee turnover in the division was significant. The division employs office technicians to gather documentation that analysts, management, and legal counsel use to determine the status of reported misconduct. The manager stated that for 2008 the turnover rate for seven office technicians was three out of seven, or 42 percent, and for 2009 the rate was four out of seven, or 57 percent. He also told us that training replacement workers was a factor in reducing productivity during that time. Specifically, he stated that only three of the division's seven office technicians were fully trained during 2008 and 2009. In addition, he stated that more recently worker furloughs had reduced the number of hours the division's staff could devote to processing cases and the capacity of the committee to review cases because the committee's monthly meetings were reduced from three days to two days to accommodate the furlough days. According to the manager, limitations in the committee's capacity to review cases also limit the division's ability to promptly eliminate and prevent workload backlogs because the cases that fall under the committee's jurisdiction can only be finalized as quickly as the committee can conduct reviews of them.

*According to the division's manager, the process the division previously used to receive and investigate reports of educator misconduct was inefficient and ineffective.*

The manager further stated that the division also lacked a management information system for tracking, monitoring, and managing the workload. He stated that the division had requested such a system for a number of years, but the division's computer system needed an upgrade to handle the normal volume of applications processed by the commission. As a result, the division has had difficulty monitoring the progress of the cases being investigated and, more importantly, tracking sensitive cases to ensure that they were reviewed based on their priority. According to the division, it has now implemented case tracking capabilities in its automated system; however, we believe more improvement is needed, which we discuss further in Chapter 2.

According to the manager, the division launched the RAP project in August 2009 to process the backlog of 12,600 RAP sheets. The manager stated that the RAP sheets involved in this project had previously been screened for serious offenses and consisted only of reports of arrests, minor offenses, and misconduct committed by individuals who no longer hold credentials. The manager indicated that these RAP sheets had not yet been opened as cases, and stated that the vast majority never became cases for investigation.

***The division employed student assistants to sort 12,600 RAP sheets into those that could be closed without review by the committee and those that may require consideration by the committee.***

For the RAP project, the division employed student assistants to sort the 12,600 RAP sheets into those that could be closed without review by the committee and those that required additional information and possible consideration by the committee for a recommendation of adverse action. These decisions are based on informal guidance agreed upon by the division and the committee chair. The manager stated that the division's senior staff counsel was responsible for approving the RAP sheets that were closed. According to the manager, the student assistants prepared a review form for each RAP sheet, and the senior staff counsel reviewed and either approved the RAP sheets for closure or requested additional information, in which case the information was obtained and the form resubmitted to the senior staff counsel. The senior staff counsel then decided whether the reported offenses should be closed or opened as cases and distributed to staff for investigation. The manager indicated that only the RAP sheets that were investigated as cases were counted as part of the workload, which was a small percentage of the total RAP sheets reviewed.

According to the manager, the RAP project is still in process. He indicated that the categories of processing are (1) closed by division staff for reasons such as the arrest did not result in a conviction or the individual did not hold a credential, (2) closed by management or legal counsel as not reaching the threshold of probable cause for adverse action by the committee, (3) waiting for documents from public agencies with knowledge of the reported misconduct, (4) waiting to be scheduled for committee review,

(5) scheduled for committee review, or (6) closed by the committee. However, the manager stated that because the division had no business need to know how many of the backlogged RAP sheets were processed and closed by division staff, management, legal counsel, or the committee, it did not track the backlogged reports of misconduct separately from the cases in the normal workflow. The manager indicated that he plans to estimate the numbers for each category as best he can after the backlog of RAP sheets has been processed. He also stated that the division's workload statistics do not reflect all of the RAP sheets processed to eliminate the backlog because the commission does not open a case in its database when a RAP sheet is processed and then closed by division staff. Thus, these types of reports of misconduct do not appear in the commission's database and are not counted as part of the division's workload.

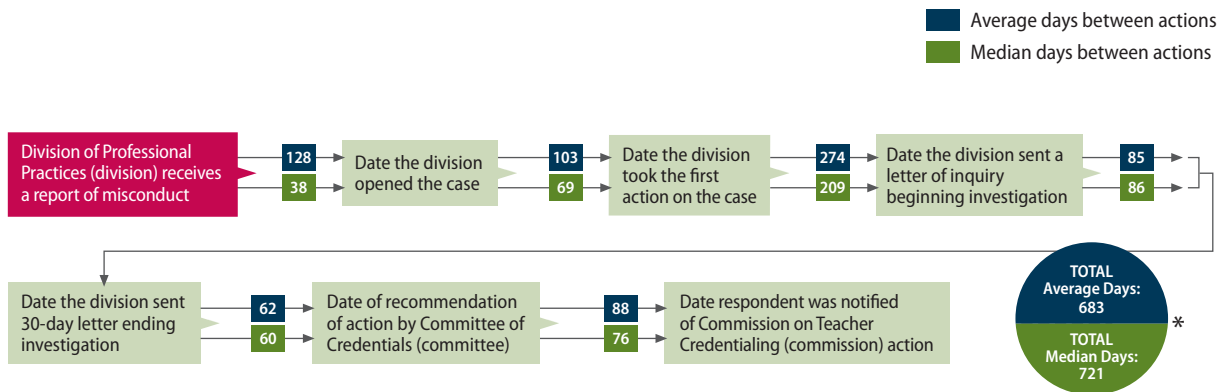
#### **Backlogs Have Been Associated With Delayed Processing of Reports of Educator Misconduct**

We reviewed a random sample of 29 cases closed by the division or reviewed by the committee between July 2009 and October 2010 to determine and analyze the amount of time that elapsed between key steps in the division's processes. Our tests revealed that some of the division's actions were not timely. Specifically, we identified critical steps in the division's investigative process and evaluated 29 of the division's reviews of educator misconduct to measure the time elapsed to conduct those steps. The average and median time periods for each of these steps are presented in the time line in Figure 4 on the following page.

The average number of days for all 29 cases as shown in the time line reflect the fact that the commission sometimes took significant periods of time to accomplish certain critical steps. Some individual cases took extreme amounts of time for certain critical steps. For example, we found that for 11 of the 29 cases we reviewed, the division took more than 80 days to open a case after receiving a report of misconduct, with one case taking almost two years and another almost three years. For nine of the cases, the division took 130 days or more to begin its investigation into the misconduct. For all 29 cases, it took an average of 85 days once it started its investigation to complete the investigative process. These cases included reports of misconduct that the division and the committee consider minor, such as driving under the influence of alcohol and other misdemeanor crimes, as well as reports of more serious criminal activity, such as felony grand theft embezzlement, resisting an officer, and one teacher who resigned after making inappropriate sexual comments to students.

*The commission sometimes took significant periods of time to accomplish certain critical steps—for 11 of the 29 cases we reviewed, the division took more than 80 days to open the case with one case taking almost three years.*

**Figure 4**  
Time Elapsed Between Steps in the Division of Professional Practices' Process for 29 Sampled Cases



Source: Analysis by Bureau of State Audits of a sample of the division's files.

\* The number of days for the steps in the timeline do not add up to equal the total days shown because, of the 29 cases in our sample, the committee granted the credentials for nine and the division closed two with no adverse action taken. Thus, only 18 progressed through the entire process and appeared before the commission for adoption of the adverse action recommended by the committee.

We asked the manager for the reasons of the time lapses, and he provided some very general explanations. For example, he stated that although some cases took a large number of days to open, the division did not lose jurisdiction. He also stated that while the division would like to open and process cases in a more timely manner, it is unable to do so due to the large number of reports of misconduct, the small number of staff, and the need to prioritize cases. He indicated that the division reviews reports of misconduct and responds to the ones that are more serious first, responding to the less serious reports of misconduct as time and resources allow. This strategy may have contributed to some of the larger lapses of time between the division's receipt of a report of misconduct and the opening of a case.

As we discuss in Chapter 2, the division has not developed performance standards to identify how long each of the critical steps we reviewed should take to complete because it has not accumulated the performance data to determine those standards. It does, however, use time guidelines and dates entered into the database by staff to warn management when steps are taking excessive amounts of time. For example, the guidelines allow for 14 days to open a case, 21 days to prepare a request for an arrest report, and 56 days to prepare a letter to a credential holder to begin an investigation. According to the manager, these time guidelines are suggestions as to when staff should take action rather than actual standards the division should follow.

Further, we reviewed 168 cases that the division reviewed and closed without a review by the committee and found that for 18 of these cases the division took one to two years to process reports of misconduct, with three others taking more than two years. According to the manager, prior to April 2010 the commission did not have an effective method for the Certification, Assignments, and Waivers Division to communicate with the division about those applications for credentials that required review by the division because of evidence of misconduct by the applicants. As a result, the division did not identify some applications as needing review. We asked its manager for an explanation for 40 of the cases we reviewed. He provided an explanation for two cases, cited the communication issue for the cause of the delayed processing for 24 of the cases and the cases' low priority for five others, but provided no explanation for the remaining nine cases.

*We found that the division took one to two years to process reports of misconduct for 10 percent of 168 cases we selected that the division reviewed and closed without a review by the committee.*

#### **Time Lapses in Investigating Reported Misconduct Potentially Allowed Educators Who May Not Be Fit to Teach to Remain in the Classroom**

In addition to the cases we reviewed as a result of our random samples to meet our audit objectives, we judgmentally selected and reviewed 30 cases that appeared to have excessive processing times and particularly serious allegations of misconduct. Similar to our earlier findings based on a random sample of cases, we found that the division experienced delays in critical steps in reviewing reported misconduct for all of these 30 additional cases. Almost all of the teachers involved ended up having their credentials revoked or suspended for various offenses but held their credentials during the delays in case processing and therefore had the potential to remain in the classroom.

A summary of the processing delays for the 30 additional cases we selected is as follows:

- On average, the time between when the division was first notified of the alleged misconduct and when it opened a case was over two months.
- After opening a case, the division averaged almost three months to make its first information request of the courts, the police, or the schools.
- After making its first information request, more than 18 months passed, on average, before the division sent the teacher a letter of inquiry. The letter of inquiry officially begins the investigation of the misconduct.



*In our review of the 30 additional cases, we found that the division did not promptly pursue all sources of information, particularly from school districts, in its review of reported misconduct.*

- Finally, after the letter of inquiry was sent, the committee took an average of more than four months to issue its decision of adverse action.

As these statistics and some specific examples cited later indicate, significant delays occurred in the division's process of requesting information from courts, police, and school districts and in its process of assessing the information gathered from these sources. In our review of the 30 additional cases, we found that the division did not promptly pursue all sources of information, particularly from school districts, in its review of reported misconduct. In at least one instance, this course of action allowed a credential holder who resigned his employment after school administrators recommended that he be terminated to take a position with another school while the division conducted a significantly delayed investigation.

We asked the manager about the delays in investigating the cases we reviewed and, in addition to more specific responses regarding particular cases, he provided the following explanations:

- All the files were completed within the legally mandated time frames of one and four years, depending on how the commission becomes aware, over which it has jurisdiction over the reported misconduct.
- The files were completed in the time frames we observed because of workload issues, employee turnover, and worker furlough days.
- The committee can review only about 60 cases per monthly meeting. As a result, some cases have to be delayed while they wait for committee review.

The following cases exemplify the need for the division to work to overcome the problems identified by its manager:

- One credential holder was arrested for distributing obscene material to a minor student. In addition, the individual allegedly had ongoing e-mail correspondence with this student in which the messages focused on antigovernment and paramilitary issues such as weapons training, targets for antigovernment believers, militia groups, and white supremacy. The e-mails came to the attention of authorities when the student was caught using a computer to attempt to buy a weapon over the Internet. The division first received a RAP sheet related to this case in May 2008, indicating that the credential holder had been arrested on a felony charge that would require mandatory revocation of the individual's credential if it were to result in a conviction. Three months later, in August 2008, the division requested records from the courts and police, and it later learned

that no criminal charges were filed in this case. Although the teacher resigned in May 2008 after school administrators recommended that he be terminated, statements in the case file indicate that he secured a job teaching at another school. Because the division did not contact the school district for information regarding this credential holder until March 2010, it did not promptly discover all of the circumstances surrounding the arrest. This delay allowed the teacher to retain his credential and remain eligible to teach. The committee eventually recommended revocation of the teacher's credential in July 2010, more than two years after receiving the RAP sheet.<sup>1</sup>

The manager stated that the division was waiting to see if the teacher would be convicted and that it cannot contact the school until it sends the credential holder a letter detailing the investigation and requesting information (letter of inquiry). However, upon receiving the RAP sheet for this case, the division had jurisdiction to open an initial review and contact any public agency for information regarding the reported misconduct. The division did not send the credential holder a letter of inquiry until more than 22 months after it received the initial RAP sheet. Waiting this long to send out the letter and then contact the school district for information highlights a problem with the division's current investigatory process.

- In November 2007 the division received a RAP sheet that a credential holder was arrested for kidnapping—a charge that, if convicted, requires a mandatory revocation of a credential. Shortly thereafter, a school district notified the division that this teacher resigned in November 2007 and that he was the subject of an investigation of inappropriate conduct that included aggressive comments directed towards students and allegations that he had raped a student.<sup>2</sup> The division opened a case for these allegations in November 2007. The school district notified the division that it had turned over information to the police and that an arrest was made, but the district attorney did not file a rape charge because the alleged incident had taken place several weeks before the student came forward, and no physical evidence was available. In January 2008 the division requested information from the court on the kidnapping charge and received a response in that same month that the court had no record of this individual as a defendant in a case. In

<sup>1</sup> In August 2010 the teacher requested an administrative hearing to challenge the committee's recommendation. Three months later, the commission's general counsel referred the case to the Office of the Attorney General. Until a decision is made, the teacher's credential is still valid, and commission staff indicated that as of February 2011, they did not know whether the credential holder is teaching.

<sup>2</sup> Based on the police reports available in division files, the two particularly serious allegations—kidnapping and rape—were separate incidents occurring at different times but both in the fall of 2007.

February 2008 the police notified the division that this teacher had been arrested on charges of rape by force and unlawful sex with a minor (same incident as referred to in the school district report) and, two days later, the division requested information from the courts and police related to these charges. That same month the court again responded that it had no record of this individual as a defendant in a case.

In March 2008 the division received a RAP sheet indicating that this same individual had been arrested for criminal threats and disobeying a court order. File notes indicate that around this time division staff placed this file on the "Document Request" shelf; no further action on this case occurred until December 2009 when the division requested documents related to the criminal threats charge. Other than requesting information from the court in May 2010 and later finding out that prosecution on the kidnapping charge had been declined for lack of evidence, the division conducted no further investigation of the original kidnapping and rape allegations. Instead, the division combined its original case from November 2007 with one opened in March 2010 related to the criminal threats charge. In June 2010 the division obtained information from the court demonstrating that the defendant pleaded guilty to criminal threats. Although this guilty plea occurred in April 2008, it was not until September 2010 that the division revoked this former teacher's credential. The manager indicated that the delay in this case was due to ineffective work processes.

***Despite learning of a conviction and beginning an investigation in December 2007, in January 2008 the commission granted an individual a credential, but ultimately revoked his credential in April 2010.***

- Another credential holder generated four different RAP sheets in 2007 for offenses ranging from prostitution to petty theft. The division opened a case in September 2007 and received information from the court on December 10, 2007, that the credential holder had pled guilty to a misdemeanor prostitution charge in March 2007. Although it was not evident from the case files whether the individual was teaching at the time of the offenses, he had held a teaching credential since 2002 and filed an application for renewal on December 29, 2007. The individual did not disclose any of his arrests or convictions in the application. Despite learning of the conviction and beginning an investigation in December 2007, in January 2008 the commission granted him a credential valid through 2012. Ultimately, the commission revoked his credential in April 2010. The division did not provide a reasonable explanation for the delay in revoking this individual's credential.
- In January 2007 a school district notified the division that a teacher was observed kissing a student. Although the credential holder resigned immediately after this incident was reported, he still held a valid teaching credential. The division did not

contact the school for more information about the incident until December 2009, even though the January 2007 report the school district provided gave the division jurisdiction to begin an initial review. Instead, the division contacted the local police and courts, which informed it that as of June 2007 no charges had been filed against the credential holder. Rather than contacting the school district at this point, the division sent another information request to the police and courts in October 2009, again learning that the police were not aware of this incident.

Although the committee initially recommended in April 2010 that the teacher's credential be revoked, the respondent requested an administrative hearing, and the resulting consent determination reduced the penalty to a 30-day suspension with three years of probation and 10 hours of counseling on the boundaries between teachers and students. The only explanation the manager provided for the delay of more than three years before the committee reviewed the case was that the file was processed within the time frame during which the commission retains its jurisdiction over the misconduct, and that workload issues and staff turnover and training were causes for the delayed processing.

- Another credential holder was dismissed in March 2008 from a charter school for allegations that he made inappropriate sexual comments to female students. A few months after his dismissal, his single-subject credential expired.<sup>3</sup> When the individual applied for a reissuance of the credential in September 2008, he disclosed that he had been released from employment for alleged misconduct. Inexplicably, the division waited until April 2009 to contact the teacher, asking him to provide more information about his dismissal. The division then contacted the school district in August 2009, receiving information in October 2009. The division issued the applicant a letter of inquiry in March 2010, beginning the initial review. Nine days later, the division issued a notice of delay letter that instructed local agencies to cancel any temporary teaching certificates they may have been issued to the individual named in the notice. Until the time that this notice went out, statements in the case file indicate that this individual had been teaching classes at other schools since January 2009. Although the end result of the division's investigation was only a seven-day suspension, the fact that this review took so long while the individual continued teaching at other institutions highlights the potential harm of the division's investigatory delays. Regarding this case, the manager

*When an individual applied for a reissuance of the credential in September 2008, he disclosed that he had been released from employment for alleged misconduct. Inexplicably, the division waited until April 2009 to contact the teacher, asking him to provide more information about his dismissal.*

<sup>3</sup> The individual also held a teaching certificate that was issued in January 2008.

*Nearly one and a half years after it first learned that an educator was charged for exposing middle school students to pornography, the division finally requested documents from the police.*

attributed the cause of the delayed processing to several issues including workload, furloughs, and the limited number of cases the committee can review.

- Finally, in another case an educator was charged for exposing middle school students to pornography in May 2007. The division first learned of the charge in October 2008, when it received a RAP sheet informing the division that the charges were dismissed. The division did not request documents from the police until March 2010 and received the police report in May 2010. According to the investigator's notes in the case file, when the division's investigators attempted to contact the parties involved in the incident in the summer of 2010, they learned that the students had progressed to high school and the vice principal who reported the incident had retired. The school principal had no information because the district had handled the incident. One student who was involved said the incident was so long ago that she did not remember the details. The father of another student was very upset that the investigation took so long. The notes show that the investigator was not able to establish contact with other individuals who had been involved. Meanwhile, this teacher went on to teach at another school district. In September 2010 the committee closed the case with no recommendation for adverse action. The manager did not offer any explanations as to why the division did not investigate this case sooner.

### **The Division Does Not Always Effectively Track the Status of Cases With the Potential for Mandatory Adverse Action Against a Credential Holder**

The law requires the commission to revoke or suspend the credentials of educators who are convicted or charged with certain crimes, such as a serious or violent felony, certain drug violations, or sexual misconduct with a minor child. In certain situations the division is notified of arrests for these offenses but must wait until a conviction is reached before it takes mandatory action against the credential holder. However, the division may review and investigate the reported criminal act and the committee may recommend the commission take adverse action on the credential holder or applicant even if he or she is not convicted of the crime. The division's progress in reaching a determination of whether mandatory action is required for such cases can be delayed by various factors, including the division's lack of activity in pursuing the information or delays by law enforcement agencies or the courts in finalizing these types of criminal cases.

We reviewed 23 cases involving potential mandatory action selected from a random sample of 30 RAP sheets dated between November 2009 and July 2010 to determine the time elapsed from the issue date of the RAP sheet to the division's final action. We did not review seven of the 30 because we determined the crime listed was not one that might require mandatory suspension or revocation of the individual's credential. We found that 11 of the cases were still open as of the end of December 2010. For the remaining 12 cases, we found that the division acted appropriately by actively gathering information on the criminal misconduct and taking final action on the case within 81 days (time elapsed is from the date of the RAP sheet to the final action, which is dependent on the final court action). Of the 11 open cases, we identified six for which the database did not reflect any recent staff actions had taken place. The following is a brief summary of these six cases, which had not received any activity since at least August 2010, possibly resulting in individuals keeping their credentials longer than the law allows, and thereby allowing the individuals continued access to schools and students.

- A credential holder was initially arrested for the use of or for being under the influence of a controlled substance. That charge was dismissed, but the credential holder was convicted of driving under the influence and causing bodily injury. The commission's database shows that it has not acted on the case since June 9, 2010, and the supervising investigator could not provide an explanation for the delay.
- A case was opened in March 2010 based on a reported arrest of a credential holder for child cruelty with possible injury or death. The individual ultimately was not prosecuted because of insufficient evidence. The office technician who opened the case in the database as potentially requiring mandatory action, with a reminder for further action by April 2010, stated that she did not follow up on the case because of the high volume of cases she had, along with the furlough days.
- The division received a RAP sheet regarding an arrest of a credential holder for possession of a controlled substance and entered the information into the database in April 2010. As of the end of December 2010, the office technician had not performed any activities on the case, although there was a note in the database that mail had been received in August 2010 regarding the case but not reviewed. The office technician acknowledged that she had not reviewed the August mail noted in the case file.
- The division received a RAP sheet on a credential holder for possession of a controlled substance in February 2010, and the last activity for this case was a request for court documents in August 2010. The analyst had made an additional court request on

*Of 11 open cases, we found six for which the database did not reflect any activity since at least August 2010, possibly resulting in individuals keeping their credentials longer than the law allows.*

*The database did not reflect the actions an analyst told us she had taken to gain information from a school district employer regarding the district's investigation and dismissal of a teacher for annoying or molesting a child.*

October 4, 2010, and after we pointed out that she had not entered the request into the database, she did so in January 2011. Failing to include the additional activity in the database, which affects management reports, provides an incomplete portrayal of the analyst's progress in reviewing the case.

- The database did not reflect the actions the analyst told us she had taken to gain information from a school district employer regarding the district's investigation and dismissal of a teacher for annoying or molesting a child. Because no charges were filed, the division was pursuing the misconduct as a result of the school district report. Although information in the database showed no activity on this case since August 2010, the analyst told us she had made several follow-up calls to the school district but had kept no records of the calls in the database or paper files. With no record of her activities, management had no way of effectively tracking her progress in reviewing the reported misconduct.
- The database did not contain updated information regarding a credential holder who was arrested for using or being under the influence of a controlled substance, willful cruelty to a child, and possession of a controlled substance. The case file in the database showed that the credential holder had a scheduled September 2010 court appearance that might have removed the offense from the credential holder's record. However, as of the end of December 2010, the database did not contain the outcome of that court appearance. After reviewing her paper files at our request, the analyst found a document showing a status update on the case dated December 21, 2010, and she entered this information on January 4, 2011.

### **The Division Often Delayed Seeking Information Needed to Review Reports of Misconduct**

In further testing related to the timing of the division's processing of reports of misconduct, we reviewed cases to identify the amount of time that elapsed between the first report of misconduct received by the division and its first attempt to obtain additional information related to the misconduct. Because the manager told us that the division began reengineering its procedures for processing reports of misconduct in February 2010, we divided the sample of cases we reviewed between those cases closed during the time preceding February 2010 and those closed after February 1, 2010. For the 15 cases in our sample that the division closed prior to February 2010, we found that an average of 188 days elapsed between the division's receipt of a report of misconduct and when it first requested additional information. Only two of these 15 cases had relatively short processing times, with the division sending out

record requests within three weeks of receiving a misconduct report. However, for eight of the 15 cases, the division took more than 180 days to send its first records request, and for three of those eight the division took 317, 337, and 517 days, respectively.

For 12 of the 14 cases we reviewed that were closed after February 1, 2010, an average of 319 days elapsed before the division requested additional information. The division sent record requests for two of these 12 cases very promptly. However, for six cases the division took more than 150 days to send the requests and sent requests regarding four cases after 439, 442, 646, and 1,029 days, respectively, had elapsed. For the remaining two cases, the division could not find the file for one and did not have a records request on file for another.

These 29 cases included reports of misconduct the division and the committee consider minor, such as driving under the influence of alcohol, as well as reports of more serious criminal activity, such as disorderly conduct, spousal abuse, burglary, and sexual intercourse with a middle school student. According to the manager, the delays in requesting additional information about the reported misconduct occurred for reasons including furloughs, high staff turnover, and the resulting staff inexperience.

### **The Division Does Not Always Investigate School Reports of Misconduct While Criminal Investigations Are Unresolved**

The law requires that employers of credentialed educators must report to the commission certain occurrences regarding allegations of misconduct. Further, state law also identifies conditions under which the commission must take action upon receiving an allegation of misconduct. These conditions include the ones shown in the text box. The receipt of these and other reports of misconduct provides the commission the legal authority to commence an investigation into whether probable cause exists for adverse action against the credential holder. In many instances, the division will receive RAP sheets and reports from employers for the same allegations of misconduct against credential holders. However, where the committee believes that the alleged misconduct reflects a lack of fitness, ability, or competence

#### **Conditions Under Which Employers of Credential Holders Must Notify the Commission on Teacher Credentialing**

- As a result of an allegation of misconduct, or while an allegation is pending, the credential holder is dismissed, is not reelected, resigns, is suspended or placed on unpaid administrative leave for more than 10 days as a final adverse employment action, retires, or is otherwise terminated as a result of a decision not to employ or reemploy the individual.
- A credential holder employed by a school district refuses without good cause to fulfill a valid contract of employment with the district or leaves without the consent of the superintendent.
- A credential holder is charged by complaint, information, or indictment with a specified sex offense or certain drug offenses involving a minor.

#### **Conditions Under Which the Commission on Teacher Credentialing Must Take Action if It Receives a School District Report**

- A credential holder knowingly and willfully uses school records of pupil data in connection with or in an implicit or explicit attempt to recruit a pupil to be a customer for a business that the credential holder owns or in which the credential holder is an employee.
- A credential holder knowingly and willingly reports false fiscal expenditure information relative to the conduct of any educational program.
- A credential holder subverts or attempts to subvert any licensing examination.

Source: California Education Code and California Code of Regulations.



to teach, it may recommend that the commission take adverse action against a credential holder even though the credential holder has not been convicted of a crime, based on the outcome of the division's investigations. We reviewed a random sample of cases to determine whether the division requested information from school employers while waiting for a criminal matter to be finalized. We again divided our sample between the periods before and after February 2010, the time the division told us that it began efforts to improve its processes for investigating reports of misconduct. For the 15 cases closed before February 2010, we found that the division sought information for only two of the cases, 320 and 342 days, respectively, after it received the initial school report.

For the 15 cases either closed after February 2010 or still open, the division requested more information from the school for seven. In these seven cases, the average amount of time that elapsed between the division receiving the school report and its request for additional information was 82 days. In one instance, the division mailed the request for information on the same day that it received the school report, and in another it took 316 days. For the other five cases, the division took between 27 and 85 days to request information from the school.

Of the 30 credential holders in these cases, 19 were reported to have committed crimes for which the law mandates automatic suspension or revocation of their credential. The division requested additional information for only two of the 19 cases from the school employers. According to the supervising investigator, for school district cases that involve criminal action, the division typically allows the criminal matters to be completed before it begins its own investigation. He also indicated that these types of cases normally involve a notification from the district that it placed a credential holder on paid or unpaid leave of absence as the result of an arrest or criminal complaint. This type of notification, according to the supervising investigator, does not give the committee jurisdiction to investigate the reported misconduct. However, the California Education Code provides the committee with jurisdiction to commence an initial review of a credential holder if it receives one of several types of reports of misconduct, including certain school district reports or a RAP sheet. In fact, the criminal charges in these cases may be dropped or plea-bargained to lesser charges that do not require mandatory action by the commission. When this occurs, the committee can still investigate and, where appropriate, recommend that the commission use its discretionary authority to take adverse action, up to and including revocation of a credential, without a criminal conviction. By waiting to follow up on these cases, the division risks losing its ability to obtain accurate statements from witnesses and victims. Because criminal cases can take months or years to finalize, witnesses

*By waiting to follow up on cases, the division risks losing its ability to obtain accurate statements from witnesses and victims.*

and victims may have moved on to other schools or jobs, or their memories of the alleged incidents may become unclear, making an effective investigation and decisions regarding adverse action without a criminal conviction difficult.

### **The Division Has Not Always Effectively Processed RAP Sheets Provided by Justice**

Prior to the changes the division made to its procedures for processing RAP sheets to address the workload backlog, it lacked effective controls to ensure that RAP sheets were accurately and promptly reviewed and entered into its database. As a result, some RAP sheets processed prior to the changes are difficult to find, impeding the division's efforts to use its database to track and manage its workload.

#### ***Some RAP Sheets Are Difficult to Locate in the Database Because of the Division's Prior Practices***

We compared the RAP sheets submitted to the division by Justice for the period January 2007 through July 2010 to the RAP sheets contained in the database. We found that the database did not appear to contain many of the RAP sheets submitted during this period. Thus, we randomly selected 60 RAP sheets containing criminal activity that potentially required the commission to take adverse action on the holders' credential to determine whether the division was aware of the RAP sheets and had taken appropriate action. As in our other samples, half of the RAP sheets we selected were submitted by Justice before February 1, 2010, and half were submitted after that date. For the 30 RAP sheets in our sample that were submitted by Justice before February 2010, we found 13 that were not included in the database, and we were unable to determine whether the database contained five others. The primary reason that we could not conclude whether these five RAP sheets were in the database was that the database notes did not have information identifying what a RAP sheet was for, such as an arrest, conviction, or dismissal of charges, or the type of criminal activity involved. Thus, we reviewed the hard-copy file to determine whether the division had, in fact, received the RAP sheet.

Moreover, two RAP sheets that were submitted to the division for individuals who requested that Justice send the commission their fingerprint clearance results, but at the time did not hold a credential, were mishandled. The division's procedures require that a file be created in the database for individuals with a reported criminal history, but who do not apply for a credential. However, in these two instances the division failed to do so. We found a

***For the 30 RAP sheets in our sample, we found 13 that were not included in the database, and we were unable to determine whether the database contained five others.***

*The changes the division made to its process in February 2010 appear to be addressing the difficulties we had in finding RAP sheets in the database prior to the change.*

similar situation related to three RAP sheets submitted by Justice before February 2010 during a review of RAP sheets involving offenses that require mandatory revocation. If these five individuals subsequently applied for a credential, the commission might not be aware of the previously received RAP sheets for these individuals because the RAP sheets were not recorded in the database. Thus, the application would likely be granted without the division's review of these individuals. All five of these RAP sheets were received before February 2010, when the division changed its process. We found no such problems after the process was changed. Thus, the changes the division made to its process in February 2010 appear to be addressing the difficulties we had in finding RAP sheets in the database prior to the change.

***The Division Does Not Notify Justice of Individuals for Whom It No Longer Needs RAP Sheets***

Of the 60 RAP sheets we described in the prior subsection, nine related to individuals who did not submit an application after submitting fingerprints to Justice. In addition, we noted 23 individuals with expired credentials who had RAP sheets that Justice sent subsequent to the expiration date of the credentials stored in the database, and two individuals who had RAP sheets even though their credentials had previously been revoked.

When the division receives RAP sheets for individuals who have submitted their fingerprints to Justice but have not submitted an application or for individuals whose credentials have expired, the division makes a specific notation in the database. This notation identifies that the division received a RAP sheet for the individual so that it can evaluate further if it receives an application in the future. In such cases the division should also inform Justice that it no longer needs RAP sheets for these individuals, but until recently it has not done so. The analyst who processes the RAP sheets stated that the division's information technology team is currently trying to develop a way to automatically send back the RAP sheets as a means of notifying Justice that they are not needed. However, in March 2011 the division began mailing the unneeded RAP sheets to Justice.

The law requires that for any agency that receives a RAP sheet for an individual who is no longer employed, licensed, or certified by the agency, to return the RAP sheet to Justice and inform Justice that the agency is no longer interested in the applicant. Although the division has not, until recently, returned the RAP sheets to Justice, if the fingerprints are more than one year old and the individual has not applied for a credential, the division flags the database file. This flag indicates to staff that, should the

individual apply in the future, the person will have to resubmit new fingerprints, thereby generating a new RAP sheet. As a result, the division will be alerted to review the new RAP sheet with the person's complete criminal history.

Because prior to March 2011 the division had not informed Justice of RAP sheets it no longer needed, the division has spent unnecessary time handling these RAP sheets. According to the manager, the division did notify Justice of the individuals whose credentials have been revoked or denied, so that their fingerprints were invalidated. However, subsequent RAP sheets for these individuals were continuously received by the division. From March 1, 2010, through February 13, 2011, the division received 2,326 such reports. Using the time estimates for the analyst who handles these RAP sheets, we calculated that the division annually spent between one week and five weeks of staff time needlessly handling these unnecessary RAP sheets. For each of these RAP sheets, the division adds a note to the individual's file in the database and saves a hard copy.

*From March 1, 2010, through February 13, 2011, the division received 2,326 RAP sheets it no longer needed and we calculated the division annually spent between one week and five weeks of staff time needlessly handling them.*

***The Division Did Not Always Immediately Suspend or Revoke Credentials***

We also randomly selected a sample of 30 RAP sheets dated between July 2007 and July 2010 and calculated the time elapsed between the division's receipt of a RAP sheet and its final action on the case to determine whether the division appropriately suspended or revoked credentials. These RAP sheets involved criminal activities that potentially required the division to suspend or revoke the holder's credential. Under most circumstances, a credential holder must be convicted of a qualifying crime in order for the division to mandatorily suspend or revoke the credential. We divided the sample between the period prior to and after February 2010, the point in time at which the division changed its practices.

Of the 30 RAP sheets we tested, we found that the division has four open cases related to RAP sheets dated between August 2009 and June 2010 for which it has not yet taken adverse action because the RAP sheets relate to arrests, not convictions. The division is also actively tracking and acting on three other cases, one with a conviction that is being appealed and two with individuals who are engaged in a drug diversion program. As such, the legal process has not been finalized, and mandatory revocation cannot yet occur. For five of the RAP sheets, the division had revoked the holder's credential within a time period that appeared to be reasonable, based on the circumstance of the case, and 15 RAP sheets related

to individuals who never were issued credentials, whose credentials have expired, or who were not convicted of a crime requiring mandatory revocation.

However, we found that for three credentials that had been revoked, the division failed to act promptly. Specifically, two of the three cases required the commission to immediately suspend or revoke the individual's credential after receiving court documents. The first case involved an individual convicted of grand theft. The division received the final court documents on April 13, 2010, but did not revoke the credential until May 27, 2010, one and a half months later. Without the revocation, this individual would have had valid credentials through 2012. The second case involved a substitute teacher who urinated in the classroom while students were present. The court prohibited the individual from being in the presence of children without adult supervision, and the individual was not allowed to work as a teacher for one year. The division received the court documents in May 2010 and should have revoked the credential at that time, but it did not revoke the individual's credential until January 2011, six months later. Therefore, these two individuals had access to classrooms longer than they should have.

Finally, the third case involved an instance where the commission may have had to immediately revoke or suspend the individual's credential, depending on the circumstances. The division had a RAP sheet showing that the individual was convicted for contributing to the delinquency of a minor in December 2007. If the crime had included lewd and lascivious conduct, the commission would have had to immediately suspend or revoke the individual's credential. The crime did not include this conduct, but the division did not know this until it opened a case and reviewed it further, which it did not do until May 2008, five months later.

#### ***The Division Experienced Some Delays in Requesting Additional Information Regarding Criminal Convictions***

We reviewed a random sample of 30 RAP sheets related to both applicants for and holders of credentials to determine the amount of time that elapsed between the division's receipt of information on criminal convictions and its requests for further documentation. For one of the 30 RAP sheets, the name did not match the name for the same Social Security number in the database; therefore, we were unable to test this sample item. The division determined that only four of the reported convictions warranted review and therefore requested additional information for them. For two of the RAP sheets, the division took nine days and 36 days, respectively, after receiving criminal conviction information to request more

information. For the other two RAP sheets, the division did not have evidence that it had requested more information, but its case files contained additional information that was date-stamped 165 days and 10 days, respectively, after receiving criminal conviction information.

For the remaining 25 RAP sheets, the division did not request or receive additional documentation because it determined the reported criminal conviction did not warrant review. For one of these RAP sheets, the division did not obtain additional documentation because the individual ultimately did not apply for a credential; for five of the RAP sheets, the individuals' credentials had expired; and the remaining 19 involved reported violations that the division did not consider severe enough to review. These violations included driving under the influence of alcohol, driving without a license or with a suspended license, reckless driving, traffic violations, theft, infraction of a municipal code, disturbing the peace, and criminal mischief.

***The Division Did Not Always Promptly Request Additional Information From Law Enforcement Agencies***

We reviewed a random sample of 30 RAP sheets to determine whether the division requested additional information regarding the individuals and the criminal activities included on the RAP sheets and, for those cases for which the division did not request additional information, whether its reasons for not doing so were appropriate. Our review found that the division did not request additional information for 13 of the RAP sheets because the individuals ultimately either did not apply for credentials or did not have current credentials. Further, the division did not request additional information for another 11 RAP sheets because it believed the criminal activities reported were not severe enough to warrant further review. Examples of these RAP sheets included a conviction for driving under the influence of alcohol, a burglary offense as a juvenile, public intoxication, reckless driving, and battery on a spouse.

Finally, for the remaining six RAP sheets, the division requested additional information. Four of these RAP sheets related to individuals who were applying for teaching credentials. When we compared the date the division received these cases to the date the division requested additional law enforcement reports, it took the division 11, 63, 93, and 150 days, respectively, to request law enforcement reports after the individuals actually submitted their applications for credentialing. For one of these cases, although the manager indicated that the division granted the credential for the individual within two days of receiving the case, he was unable to provide an explanation as to the reasons the division granted the

***From the date the division received certain cases to the date it requested additional law enforcement reports, the division took between 11 and 150 days to request law enforcement reports.***

credential before reviewing the records related to the self-disclosed misconduct—a driving-under-the-influence arrest—which the division received approximately 63 days later. The division manager also indicated that staff did not request information about an applicant’s public intoxication conviction for 93 days because the case was considered low priority. Finally, he stated that the division took 150 days to request information for an applicant who had been convicted of a misdemeanor for impersonating a police officer because the staff who initially reviewed the case did not believe it warranted a records request. The remaining two RAP sheets were related to individuals who have current teaching credentials. The division requested law enforcement reports immediately in one case and took 204 days in the second case.

### The Division Uses Its Discretion to Close Certain Cases Involving Misconduct Without Presenting the Cases to the Committee for Review

According to the division’s discipline workload report for fiscal year 2009–10, the staff, chair of the committee, and executive

director discussed strategies to streamline the processing of cases pending review by the committee and decided to give the division the authority to grant applications and close cases for allegations that are under the committee’s jurisdiction but that the division determines the committee would not be interested in recommending adverse action. According to the division’s assistant general counsel, the division’s staff rely on informal guidelines developed by management and legal counsel as part of an evolving process that is based upon the historical actions of the committee when presented with similar cases, conversations with various committee members, and knowledge gleaned from litigation during the administrative hearing process. Division management has relayed these guidelines, which are summarized in the text box, to division staff through informal memoranda, e-mails, and handouts. However, not included in the informal guidance materials the manager provided are detailed conditions and exceptions that are attached to some of the guidelines. For example, the committee holds credential holders to a higher standard than applicants. The manager told us that, as a result, the committee reviews a credential holder’s conviction of petty theft for possible discipline, but does not review an

#### Guidelines the Division of Professional Practices Uses to Determine the Types of Misconduct That It Does Not Move Forward for Committee of Credentials’ Review

- Alcohol-related offenses not complicated by excessive blood alcohol content, children in the car, injury, or property damage, or do not involve driving to or from school or school property.
- Petty theft.
- Certain misdemeanors.
- Spousal abuse.
- Arrest or conviction cannot be for an offense that requires the Commission on Teacher Credentialing (commission) to deny an application for, or revoke, a credential.
- Arrest or conviction does not imply that a child or school was involved.
- Convictions are not for trespassing or disorderly conduct.
- Misconduct occurred more than five years prior to an application for a credential or no more than one offense involving any of the above within the last five years.

Source: Commission’s Division of Professional Practices.

applicant with the same conviction. He also stated that credential holders or applicants with convictions for spousal abuse may or may not be reviewed by the committee depending on the severity of the abuse. Finally, convictions for trespassing or disorderly conduct may be a reduction from more serious criminal charges. According to the manager, the more serious criminal charges are reviewed by the committee, but the less serious charges are not necessarily reviewed by the committee, depending on the underlying activity. However, the guidelines provided by the manager do not include any explanation as how to assess the severity of the criminal charges to determine whether they warrant review by the committee. According to the manager, he is responsible for approving the recommendations of division staff to close these cases, and when the decision is not clear, he seeks the approval of the division's legal counsel.

We reviewed a sample of 168 cases that division staff closed without any committee review or approval between August 1, 2010, and October 31, 2010, and found that the cases involved a variety of types of misconduct. For example, our review found that the division closed 21 cases because the individual had only one conviction for driving under the influence in a five-year period, and closed the remainder of the 168 cases for various other reasons.

#### ***The Division Exercised Even More Discretion Than Is Detailed in the Guidelines When Closing Cases***

We also found that the division closed some cases that demonstrate the division has exercised even more discretion than is detailed in the guidelines. The following cases highlight the extent of the discretion the division used. One involved a teacher with a history of misconduct involving students, and in another a teacher was originally charged with willful cruelty to a child before being convicted of a lesser offense of loud and unreasonable noise.

The first case involved a 2008 incident in which a teacher required students to sign a statement acknowledging that they would allow the teacher to restrain them if they were disruptive in class. The teacher actually did restrain one student from speaking and tried to restrain her in her chair. The case file included court documents with statements from the students involved describing the events leading up to the teacher's behavior and statements by witnesses of the incident. However, according to case file notes, the case was dismissed and the teacher was reinstated to the classroom. The case file notes state that based on the reinstatement of the teacher, the division's legal counsel recommended that the case be closed without review by the committee, although the committee had reviewed this teacher in 2006 for charges of actions causing injury



to a student. Although the school eventually reinstated the teacher, the committee still had jurisdiction to review the misconduct and reconsider the teacher's fitness to hold a credential. The teacher currently holds a credential and continues to have a license to teach in the classroom.

The second case involved an applicant for a certificate of clearance (required for student teachers) who had been convicted in May of 2001 of loud and unreasonable noise, though the original arrest was for willfully and unlawfully causing a child to be endangered. Division legal counsel determined that the conviction was too old to pursue. Consequently, the credential was issued, allowing the applicant to become a student teacher without being reviewed by the committee.

In two other instances the division closed the cases because division management did not believe the committee would be interested in hearing the cases. One dealt with a conviction for vehicular manslaughter without gross negligence—a misdemeanor—and was closed because the offense did not involve children or aggravating circumstances. The second case dealt with 2007 convictions of inflicting corporal injury and battery on a spouse. The division closed this case in September 2010 because the convictions were old and the division could not prove drug use. In both cases, it was the legal counsel's opinion that the committee would not want to evaluate these cases.

Moreover, we found cases where applicants, when answering professional fitness questions on the applications, disclosed that they had convictions or had not been rehired by their employers, but the division relied on the statements of the applicants regarding those circumstances and did not perform follow-up to ensure the accuracy of the applicants' statements. According to the manager, when an applicant discloses misconduct that may be of concern regarding his or her professional fitness and the explanation is unclear, division staff contact the applicant to obtain a written statement, and either approve the application to be granted due to a lack of disqualifying misconduct or open a case and process the misconduct further. However, he also stated that if division staff determine the explanation indicates there was no misconduct, then the division does not do more research. In addition, he told us that school districts are required by law to disclose allegations of misconduct in specified circumstances. Nonetheless, we found two examples where school districts failed to notify the commission of allegations of misconduct.

*The manager told us that school districts are required by law to disclose allegations of misconduct in specified circumstances. Nonetheless, we found two examples where school districts failed to notify the commission of allegations of misconduct.*

Finally, we found 49 cases where the division granted a credential or allowed the holder to retain the credential without committee review because the convictions were more than five years old. An example of one of these cases involved an individual who failed to disclose in his application five convictions from 1993 to 2001, one for battery of a police officer, three for driving under the influence of alcohol, and one for driving without a license. Despite these circumstances, on the same day that it prepared a final notice of incomplete application requesting that the applicant provide a detailed letter explaining his convictions, the division granted his credential without committee review. In another case, a holder who applied for an additional credential was arrested for spousal battery, but charges were never filed. According to the manager, if the spousal abuse is serious, the division will send the case to the committee, and the committee could recommend an adverse action. However, to decide the seriousness of the spousal abuse, division staff would have to exercise discretion to weigh the misconduct against the standards for investigation in the commission's regulations and the law. As we discuss in Chapter 2, we do not believe the division may lawfully exercise such discretion.

#### ***The Division Approved Applications When Applicants Failed to Disclose Convictions***

The division approved and granted credentials for 59 applicants without committee review despite the applicants' failure to disclose some type of misconduct. Under the law, failure to disclose information on an application, where the applicant intentionally attempted to deceive or mislead, is cause to deny the application for a credential, and the committee has jurisdiction to investigate applicants who fail to disclose convictions, adverse actions or a denial of license, or pending criminal or licensure investigations on their applications. According to the manager, nondisclosure of all misconduct, including convictions, is a concern and a crime. Applicants perjure themselves when they do not disclose misconduct because they sign the application under penalty of perjury. Further, he stated that failing to disclose misconduct is cause for concern when the commission reviews misconduct. However, we found that the 59 applicants had not disclosed as many as four convictions. Examples of the convictions applicants failed to disclose included unemployment fraud, driving without a license, shoplifting, battery, and drug-related offenses. In addition, the division manager stated that the division depends on its other reporting systems to bring the undisclosed misconduct to its attention. However, in a different test we identified a case where the applicant self-disclosed a conviction the division had no record of

***We found 49 cases where the division granted a credential or allowed the holder to retain the credential without committee review because the convictions were more than five years old.***

receiving, although Justice had sent the RAP sheet in 2008. If the conviction was not self-disclosed, the credential would have been granted without any division review.

The division sends letters to those applicants who do not disclose required information, such as criminal activity, misconduct, pending investigations, revoked or denied licenses, or charges or convictions. The letter also informs the applicant that failure to disclose is considered falsification of an application and grounds for denial of an application, and any future failure to disclose this information on subsequent applications may result in adverse action against the applicant's credential. The database did not show that a letter was issued to 22 of the 59 applicants we identified as failing to disclose.

Moreover, the division uses a form to document approval by division management and legal counsel for closing a case without committee review. If an applicant fails to disclose any required information on the application, the office technician or analyst is to note this on the form. However, for 12 of the 59 applications in which the applicants failed to make a required disclosure, division staff did not mention the nondisclosure on the form. Therefore, division management and legal counsel may have authorized case closures without knowing that the applicants had failed to disclose information on the applications.

### **Recommendation**

To comply with the law and reduce unnecessary workload, the division should continue to notify 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.

## Chapter 2

### THE DIVISION OF PROFESSIONAL PRACTICES NEEDS FURTHER IMPROVEMENT IN ITS PROCESSING OF EDUCATOR MISCONDUCT

#### Chapter Summary

Although the Division of Professional Practices (division) has taken steps to improve its processing of reported educator misconduct, more improvement is needed. We expected to find that the division conducted strategic planning that addressed the internal and external challenges it faces in accomplishing its mission. The plan would also need to address the issue of whether the Committee of Credentials (committee) can reasonably address all 5,000 annual misconduct cases itself, as the law states, or whether it needs to develop a legally defensible method of delegating certain cases to staff based on explicit written direction for resolving certain types of misconduct cases. We also expected this explicit written direction to result in comprehensive written procedures that would ensure consistency in how misconduct reviews are performed and decided.

In order for the division to effectively manage its workload, we expected to find accurate and complete workload information that informed management of the number of cases, types of cases, length of time a case spends in each stage of resolution, and the person responsible for the case, as well as reports on the extent to which it was meeting performance benchmarks contained in its strategic plan. Integral to this is a system to ensure that all reports of misconduct received are identified with a unique identifier so that the status and resolution of each can be tracked. Without these types of effective management practices in place, the public is at risk because the Commission on Teacher Credentialing (commission) may be slow, or may fail, to revoke a teacher's credential, even though the teacher may be unfit to perform the duties authorized by the credential. Although we expected to find the types of controls previously discussed, we did not.

For example, the commission's strategic plan does not address the important challenges the division faces in accomplishing its functions. According to the assistant general counsel, the committee can review only about 50 to 60 cases each month. However, the division's fiscal year 2009–10 workload statistics report shows the division opened between 4,288 and 5,662 cases annually during fiscal years 2005–06 through 2009–10. As such, staying current with its workload has prompted the division to exercise discretionary decision making regarding the closure of

certain types of cases of reported misconduct—discretion that is lawfully reserved for the committee. In addition, the division has not collected the workload data needed to assist in determining the required level of staff to meet the workload.

Moreover, the division has not developed comprehensive written procedures for reviewing reported misconduct. Such procedures are necessary to inform division staff of management's policies and procedures, serve as reference material, and provide a training tool for new employees. Importantly, the commission's Credentialing Automation System Enterprise (database) that the division uses to track the cases it reviews and investigates does not always contain complete and accurate information. The database currently provides a number of reports that the division believes assist management and staff in processing cases more quickly. However, based on the inaccuracies we found in the database, we question how useful the reports will be to the division in assisting it to monitor its workload. Also, the division has not developed and implemented procedures to account for all reports of educator misconduct it receives.

Although the division recently implemented reports and processes intended to better manage its workload and to track cases and complaints of criminal notifications, the reports lack the information necessary to make them efficient case-tracking and management tools, and they do not always address the problems we identified during our review. For example, its reports do not include reasons for case delays, meaning that effective oversight of the cases listed in the reports requires time-consuming additional research to identify case status.

### **The Division's Strategic Plan Does Not Address Important Challenges to Promptly Process Reports of Educator Misconduct**

Despite the workload backlogs, the division's strategic planning does not fully address the challenges it faces or the staffing levels necessary for accomplishing its mission. The commission has defined its mission, in part, as to ensure integrity and high quality in the preparation, conduct, and professional growth of the educators who serve California's public schools.

The strategic planning materials the division provided include many of the elements suggested for effective strategic planning. For example, the document labeled as the strategic plan includes the commission's vision, mission, and goals as adopted by it in 2007. The division's action plans for achieving those goals include task descriptions, performance measures, timelines to complete the tasks, and notes relating to the tasks and their completion.

However, the materials the division provided do not include an assessment of the external opportunities, threats, and strategic issues facing the division. A detailed evaluation of trends, conditions, opportunities, and obstacles should direct the development of the strategic plan and serve as the basis for justifying the commission's decisions regarding its goals, objectives, strategies, and performance measures. However, the division faces a number of obstacles to performing its duties that are not addressed in its strategic planning.

Specifically, the materials the division provided do not include an assessment of the strategic issues facing the division, such as the limited capacity of the committee (whose members volunteer time) to process the necessary workload and the staffing levels for the division. The strategic planning documents indicated the commission surveyed external stakeholders. However, the responses primarily discussed the division's performance and cited two themes from the survey: be more timely in informing stakeholders on legal actions and continue to safeguard children through background checks and disciplinary actions. The strategic planning documents did not indicate the results of an assessment of internal factors, such as surveys of employees. According to the division's Support Section manager (manager), the commission's strategic planning consultant conducted confidential surveys in small group sessions to encourage open dialogue, but the commission did not have any additional information regarding the outcome of those sessions.

#### ***The Division Has Not Addressed the Committee's Limitations on the Number of Misconduct Cases It Can Review Each Month***

The limited capacity of the committee to review reported misconduct restricts the division's ability to promptly process cases. According to the assistant general counsel and the division's manager, the committee can review only about 50 to 60 cases each month, whereas the division's fiscal year 2009–10 workload statistics report shows the division opened between 4,288 and 5,662 cases annually during fiscal years 2005–06 through 2009–10. Members of the education community, including teachers, administrators, and board members, as well as representatives of the public, make up the committee. Committee members are expected to work three to four days each month to fulfill the duties of the committee. As a result, in its current configuration it is doubtful that the committee members, who typically also have full-time jobs, could spend more time on committee activities, thereby increasing the number of cases the committee reviews. While the law might permit division staff to review and close some reported cases of misconduct under the limited circumstances discussed on page 51, only the committee may weigh

***The committee can review only about 50 to 60 cases each month, whereas the division's fiscal year 2009–10 workload statistics report shows the division opened between 4,288 and 5,662 cases annually.***

the impact of misconduct on students and exercise discretion to determine whether to recommend that the commission discipline the credential holder or end an investigation without a recommendation for discipline.

***The Division Has Not Collected the Workload Data Needed to Identify Its Staffing Needs***

Further, division management has not collected the workload data needed to identify the staffing levels necessary to accommodate the division's workload. According to the manager, the division prepares a monthly workload statistics summary report that displays the number of major tasks staff completed. He stated that the summary reports are a basic management tool, but the reports could provide some of the data needed to identify staffing levels. He provided the monthly summary reports for July 2010 through January 2011. However, he added that he did not have any plans to use the reports to identify necessary staffing levels at this time.

The division has established timelines for performing some activities connected to processing cases. The timelines include an anticipated number of days and a lesser number of days for each activity listed. However, in a March 2008 letter to the Service Employees International Union, the commission characterized the timelines as part of a tracking system to ensure that cases are processed within the statutory-based timelines that, if exceeded, would cause the commission to lose its authority to discipline a teacher who is convicted of a crime and should not be with children. According to the letter, the tracking system will notify staff and management when tasks are not completed within a specified time. The commission stressed that the timelines will not be used to discipline staff.

To develop some guidance on the amount of time required to perform case processing and thereby determine the number of staff required to perform the various tasks, the division will need to collect specific data. For example, the division will need data regarding the time required to process a variety of case types, ranging from minor offenses for which the division takes no action, to cases that require the gathering of information surrounding the offense so that management and legal counsel can know the severity of the misconduct, to cases that require an investigation by the division and a hearing by the committee. Until it does so, the division cannot determine the staffing levels it needs to ensure that it can effectively process its workload.

***Until the division develops guidance on the amount of time required to perform case processing, it cannot determine the staffing levels it needs to ensure that it can effectively process its workload.***

### **The Division Has Expanded Its Role in the Discipline Process to Address Its Backlog**

In an effort to expedite the processing of cases, the division has expanded its role in determining which cases of reported misconduct should be presented to the committee for review and which cases can be closed by division staff without review by the committee. Our review of some of the division's cases, as presented in Chapter 1, revealed that at times the division's staff closed cases where the committee had jurisdiction, but without presenting the cases to the committee for its consideration, review or approval of the division's actions to close them. In closing these cases, the division is required to apply the standards for investigation from the commission's regulations, also known as the Morrison factors and shown in text box no. 2 in the Introduction on page 10, and exercise discretion and judgment to analyze whether a relationship exists between alleged misconduct and the applicant or credential holder's fitness, competence, or ability to teach. According to the assistant general counsel, lower-level staff review the misconduct reports and recommend case closures, which are approved by division management and, sometimes, division legal counsel. In making these decisions, the division's staff rely on informal guidelines developed by management and legal counsel as part of an evolving process that is based upon the historical actions of the committee when presented with similar cases, conversations with various committee members, and knowledge gleaned from litigation during the administrative hearing process. According to the assistant general counsel, the commission interprets the California Education Code (Education Code) as giving division staff the legal authority to exercise discretion to close cases without committee consideration, review, or approval. However, because the guidelines lack sufficient specificity and have not been formally approved or adopted by a quorum of the committee, our legal counsel has advised that by permitting the division's staff to exercise judgment in closing cases that are not presented to the committee for consideration, review, or approval, the committee is unlawfully delegating its discretion.

*Because guidelines lack sufficient specificity and have not been formally approved or adopted by the committee, permitting division staff to exercise judgment in closing cases that are not presented to the committee is unlawful.*

### **The Division Lacks Comprehensive Procedures to Ensure the Consistency of Its Misconduct Reviews**

The division does not have comprehensive written procedures to ensure the consistency of its reviews of reported misconduct, in accordance with management's policies. Moreover, in the Financial Integrity and State Manager's Accountability Act of 1983 (act), the Legislature declared that state policy requires each state agency to, among other things, maintain effective systems of internal accounting and administrative control as an integral part of its management practices. The act defines internal controls, in part, as methods



to promote operational efficiency and encourage adherence to prescribed managerial policies, and states that these controls must include an established system of practices to be followed in the performance of duties and functions in state entities.

Sound management practices, in order to be consistently followed and unequivocally understood, require that each state entity develop a comprehensive procedures manual for its internal business and financial processes. Such written procedures serve a variety of functions. For example, they provide written notice to all employees of the entity's expectations and practices, provide direction in the correct way of processing transactions, serve as reference material, and provide a training tool for new employees. Without clearly written current procedures, an internal control structure is weaker because practices, controls, guidelines, and processes may not be applied consistently, correctly, and uniformly throughout the entity.

However, according to its manager, the division does not have a comprehensive procedures manual. When we asked for the division's procedures, we were given a collection of discrete documents that included a publication produced by the commission in 2009 titled *California's Laws and Rules Pertaining to the Discipline of Professional Certificated Personnel*, court decisions, flowcharts, e-mails, a PowerPoint presentation of the discipline process, a user's manual for case activities that describes how to enter data into the commission's database, a data dictionary that describes terms used in the database, and procedures for processing and entering reports of arrest and prosecution (RAP sheets) into the database.

We found that the materials the division provided as its procedures are not all consistently used, are not all current, nor are they all kept in a central location for staff to access when processing their cases. For example, the *DPP User's Manual for Case Activities* (user's manual) that the division uses when entering information into its database is not current and is not always followed by staff. Specifically, we found that the division has not updated the user's manual to reflect the addition of and changes to codes it uses to track reports of misconduct. For example, the division created a new code in the database in 2010 as a pilot project to use when entering certain types of misconduct into the database. The division manager communicated the use of this new code to staff through an e-mail. However, although the e-mail indicates that the new codes should be used to record misconduct, such as recording a first-time arrest for driving under the influence, it did not identify the other types of offenses that would be applicable to the new code. Further, although using the code has become standard practice, the procedures the commission provided us did

***We found that the division has not updated the user's manual to reflect the addition of and changes to codes it uses to track reports of misconduct.***

not include communication to staff that the use of the code was no longer considered a pilot project and that the division had adopted the procedure. According to the manager, the procedures may not all be current because the division is small, implements changes quickly, and had competing priorities. He also stated that because the division is in a phase of constant change, keeping the manual up to date would involve constantly changing the procedures manual. Nevertheless, maintaining current procedures and ensuring staff follow them is essential for consistent and efficient reviews of misconduct.

In addition, our testing identified that staff used the case activity codes inconsistently and did not always enter information in the database's case notes tab as the user's manual directs. For example, the user's manual requires the division to record the RAP sheets it no longer needs within the case activities section of the database, but we observed instances in which the division entered RAP sheets in a section other than the one indicated in the user's manual.

Moreover, although the division manager indicated that staff can access many of the division's procedures on a shared drive, we question whether these procedures contain the most up-to-date information. For example, the division has communicated through e-mails but has yet to formalize guidance that it provides for processing those cases it determines the committee does not need to review. During our fieldwork, the division manager confirmed the informality of these guidelines by handwriting the effective dates on the e-mails he provided, in addition to making handwritten edits. The fact that handwritten notes were made to these documents indicates that staff may not have access to the appropriate versions of these procedures. Further, the division continues to modify its guidelines through e-mails to staff. Consequently, the lack of up-to-date, formalized procedures does not provide staff with clear direction for performing their duties.

Finally, we also found that the division does not have written procedures established for the staff that perform specialized tasks. During the audit we identified staff with unique specialized duties, which means that in their absence, the ability of the division to perform its work is limited. Three important areas include processing the school district misconduct letters received, determining the priority of cases for committee review, and preprocessing applications for all staff. The division's manager and supervising investigator pointed to the division's reliance on the experience and knowledge of the staff and the confidence they have in these staff to accurately perform their duties as the justification for the specialization of duties. However, reliance on one person to handle a specific task without written procedures for others to

*The lack of up-to-date, formalized procedures does not provide staff with clear direction for performing their duties.*

*The database contained many errors and did not always contain complete information on criminal reports of misconduct that Justice provides to the commission.*

follow in their absence leaves the division vulnerable to inconsistent practices in the processing of incoming misconduct reports, which may affect the outcome of the discipline process.

### **The Database the Division Uses to Manage Its Workload Does Not Always Provide Accurate or Complete Information**

The database the division uses to track the cases it reviews and investigates does not always provide accurate and complete information. According to the division, it is working toward refining its database so that it can be used to identify and track documents, applications, and cases as the division processes them. The manager stated the division ensures that the data entered into the database is accurate, and he indicated that the division provides staff on-the-job training and a case activities manual. He also stated that through the day-to-day operations of the division, supervisors and attorneys review files for completeness and accuracy. However, when we compared the data contained in the database to the division's paper files, we found that the database contained many errors and did not always contain complete information on the criminal reports of misconduct that the California Department of Justice (Justice) provides to the commission. Moreover, the database currently provides a number of reports that the division believes assist management and staff in processing cases more quickly, but as we discuss in greater detail in a later section, based on the inaccuracies we found in the database, we question how useful the reports will be to the division in assisting it in monitoring its workload.

As discussed in the Scope and Methodology, we assessed the reliability of the commission's database. As part of our assessment, we conducted accuracy testing on three samples: one of case activities, one of RAP sheets sent by Justice, and one of reports from the National Association of State Directors of Teacher Education and Certification (NASDTEC), and traced key data elements to the source documentation in the commission's case files or electronic NASDTEC reports. We found no accuracy errors in the key fields related to RAP sheets and NASDTEC reports, but found several errors in the key fields related to case activities. Specifically, in our sample of 28 case activities, we found three errors in the data field that tracks the date an activity begins and in the field that describes which activity is being performed, such as a request for court documents or Department of Motor Vehicles records and two errors in the field that describes the action that needs to be taken, such as opening a case.

Accordingly, we determined that the commission's database is not sufficiently reliable to identify the number of various types of reports of misconduct, the actions taken by the committee, the recommendations for adverse action, and the number of days between the date that division staff opened and closed a case for cases the committee did not review that were opened during the period of January 2007 through June 2010.

In addition to our accuracy testing, we found in other samples we tested that there were discrepancies between the information in the database and the associated paper files. We identified five case files where there were no documents in the paper file to support an entry in the database, such as the division's request for additional information about a case; another case where the division issued document request letters, but the requests were not noted in the database; and 18 dates recorded in the database that were one month or more after the division actually received the paper document. In addition, the division could not locate paper files for two cases we reviewed.

Moreover, we found a number of problems with the division's tracking of RAP sheets within its database, which we discussed in Chapter 1 on page 37. Again, we question how useful the improvements to the database will be in processing reported misconduct and monitoring the division's workload if the existing database contains inaccurate and incomplete information.

Finally, we also reviewed the database in order to determine whether changes or adjustments made to the records in the database are adequately supported. We found that the database contains an audit log for selected changes its staff make to data stored in the database. However, the commission began tracking changes to the data field containing the date an activity began in May 2010. Therefore, this would only allow us to test data related to the last 48 days of our audit period. Because this significantly limited our ability to test a sample of changes made to the system, we instead performed a review of the controls over data changes and reviewed the controls that limit users' access.

In conducting this review, we identified a significant weakness in the commission's controls over whether records are appropriately deleted from its database. We met with commission staff to obtain the policies and procedures related to managing data changes. We found that the commission lacks policies and procedures for managing changes and deletions to its database. Additionally, we found that the division did not require supervisorial review and approval of records to be deleted from the database. In fact, division management was unaware that staff could delete vital information, such as cases related to misconduct or activities related to cases. We also determined that the database contains no link between a

*The commission lacks policies and procedures for managing changes and deletions to its database and did not require supervisorial review and approval before records are deleted from the database.*

deleted record and the individual to which that record pertains. Therefore, we were unable to determine if deletions the division's staff made were appropriate. In response to our inquiries, in February 2011 the division manager directed staff not to delete cases, modified the database to remove the "delete case" function, and developed case deletion procedures.

### **The Division Needs to Further Improve Its Controls Over the Receipt of Reports of Misconduct**

Although in some instances the division has been successful in improving its procedures to ensure that all reports of misconduct it receives are accounted for and processed, we found that more improvement is needed. Reports of misconduct may come from various sources, as discussed in the Introduction on page 12. In the past, the division did not always track all of the reports of misconduct it received; thus, the division could not ensure that it had processed all of the reports. Recently, however, the division developed a series of management reports intended to account for the reports of misconduct it receives. Although these new management reports assist the division in tracking some types of reports of misconduct, they are not accounting for all of them. Additionally, we identified some problems with the lack of information contained in the new management reports the commission is generating.

*We identified some problems with the lack of information contained in the new management reports the commission is generating.*

For example, the Certification, Assignments, and Waivers Division (certification) within the commission is responsible for evaluating and processing applications from individuals who are applying to obtain their credential. In the past, the commission did not have an effective method for informing the division of those applications that contain self-disclosures of misconduct or those applications connected to some types of criminal behavior. Specifically, certification did not adequately inform the division of which applications were ready for review. At times, this caused the division to delay the processing of some of these cases. However, according to the division manager, in either February or March 2010, the commission began using two reports to track applications from certification, which the division manager believes has corrected the previous difficulties the division had in accounting for these applications. These two reports—the Daily Application Report and the Application Aging Report—are generated from the database. According to the division manager, his division uses these reports to ensure that it is aware of the applications that are ready for processing. However, the Application Aging Report we reviewed did not always reflect accurate information. Specifically, we reviewed 12 applications included in the Application Aging Report. The report indicated that the

division had yet to open a case for six of these applications. However, when we reviewed the six applications, we found that the division had, in fact, opened cases for two of them. Thus, we question the usefulness of this report. In another example, in the past, when certification received the RAP sheets from Justice, it would provide hard copies to the division. At the time, the division did not have a process to track the RAP sheets until its staff reviewed the hard copies of the RAP sheets and opened cases, when necessary. Thus, the division had no way to ensure that all RAP sheets it received were appropriately processed. However, the division indicated that in February 2010 it began to implement a process to more closely track the RAP sheets. Specifically, certification now simply forwards the electronic file it receives from Justice to an employee within the division, who is responsible for making an initial determination as to the category of the criminal misconduct identified in the RAP sheet, as shown in the text box, and enters the RAP sheet and the category into the commission's database. On a daily basis, the division prints out a report that summarizes the RAP sheets it has received as well as a weekly summary report. According to the division manager, these reports allow his division to track the RAP sheets before they become a case or are closed by division staff, and they assist staff in prioritizing their work.

Although we agree that this new process of tracking reports of criminal misconduct is an improvement over the old one, we found that the division lacks a control process to ensure that all the RAP sheets are entered into the database, and also to ensure that staff enter RAP sheets accurately. For example, the analyst responsible for receiving and reviewing the RAP sheets stated that she compares the incoming record counts from Justice with the number of criminal misconduct reports she processed, but she does not maintain a record documenting her verification. Additionally, the division manager stated that he does not perform any type of reconciliation to ensure that the total number of RAP sheets entered into the database during a given period agrees with the total sent by Justice during that same period or that the information his staff enter into the database accurately reflects the information in

### Categories the Division of Professional Practices Uses to Process Reports of Arrest and Prosecution

#### Reports of arrest and prosecution (RAP sheets) that require additional processing:

- **New:** The level of misconduct likely will not require review by the Committee of Credentials (committee), nor does the misconduct require mandatory action by the committee.
- **Potential letter of inquiry:** The level of misconduct will potentially require the committee's review.
- **Potential mandatory:** The level of misconduct potentially requires a mandatory action by the Commission on Teacher Credentialing (commission). These RAP sheets are a priority and require immediate processing.
- **Open-case update:** The Division of Professional Practices (division) had previously opened a case for the individual and is still processing the prior misconduct.

#### RAP sheets that do not require additional processing:

- **Duplicate:** The individual was fingerprinted on multiple occasions, and thus the RAP sheet appears to be a duplicate and contains the same arrest or conviction information.
- **Red flag return to the California Department of Justice:** The individual is no longer a credential holder or does not have a current application on file. Further, the date of the misconduct was not during the time the person's credential was in effect, if applicable.
- **Already reviewed:** RAP sheets for misconduct that the division has already reviewed.
- **Traffic:** RAP sheets involving minor traffic violations, such as speeding.
- **Infraction:** RAP sheets involving violations of local ordinances or charges that have been reduced from a minor misdemeanor to an infraction.
- **First offense driving under the influence (DUI):** RAP sheets that involve only one DUI offense.
- **No action needed:** RAP sheets involving situations in which there may have been an arrest but no formal charges were filed.

Source: Division's "RAP process."

the RAP sheets. In fact, our review of one weekly report revealed that staff entered an offense code incorrectly, and in a second report staff did not categorize a RAP sheet correctly. Furthermore, in some instances division staff may classify incoming RAP sheets having the same offenses under different levels of severity. If management does not perform any type of review over how staff classifies RAP sheets, the division risks classifying them incorrectly. Improper identification of the severity of the reported misconduct can lead the division to improperly assess the potential harmful effects of the misconduct on students and schools and to inappropriately dispose of allegations of misconduct.

Additionally, approximately once a month, the division receives notifications from NASDTEC that include information listing educational personnel who have received disciplinary action in other states. Division staff query the commission's database for the names contained in the NASDTEC report. If they find a match, they open a case and request additional documentation regarding the misconduct noted in the NASDTEC report. According to the office technician responsible for receiving and processing the NASDTEC reports, she indicates on a spreadsheet for each individual whether there was a match and provides the number of matched individuals to a staff services analyst for reporting purposes. However, the division manager stated that he does not perform any type of quality control review to ensure that his staff are performing appropriate queries or making notes within the database for all of the educational personnel listed within the NASDTEC report.

*The division manager stated that he does not perform any type of quality control review to ensure that his staff are performing appropriate queries or making notes within the database.*

Finally, the division also lacks a systemic process to ensure that it effectively accounts for and processes all other types of reports of misconduct that it receives through the mail. According to the division's supervising investigator, he is responsible for the processing of reports of misconduct other than RAP sheets, such as school and school district reports, affidavits, and testing reports. The supervising investigator provided documentation demonstrating that he tracked incoming affidavits on a spreadsheet, but he did not have in place a process to do the same for schools, school districts, and other reports. Additionally, more than one staff member is responsible for receiving and tracking these reports. For example, the office technician responsible for opening the mail stated that he forwards incoming school district reports related to already-open cases to the analyst or investigator assigned to the case, but when there is not an open case in the database, he gives them to a designated staff member. The supervising investigator stated that he also receives the incoming school district reports directly from the mail in those situations in which an open case does not yet exist in the database. In addition, the office technician who opens the mail told us that he does not prepare a listing of

the school district reports the division receives. As a result, the division does not independently prepare records of the reports it receives to facilitate accountability. Because these reports are received by multiple staff members, and because the division does not document the initial receipt of the reports from the time of mail delivery, the division cannot be certain it tracks reports in a way that ensures all reports it receives are accounted for and that staff appropriately process them.

### **The Division's Case-Monitoring Efforts Continue to Need Refinement**

Although the division recently implemented reporting tools intended to enable it to better manage its workload and track cases and notifications of misconduct, the reports lack the information necessary to make them efficient case-tracking and management tools. In a December 2010 report, the division stated that it had finished its case-tracking system, which identifies and tracks documents, applications, and cases as they are processed through the division; provides weekly reports to staff and management to ensure that cases are processed in a timely way; and identifies high-priority cases and notifies management when activities related to these cases are not completed. However, we found that the new case-tracking reports do not address all of the problems we identified during our review of the division's investigation of reports of educator misconduct as described in Chapter 1. For example, its reports do not include the reasons for case delays, and thus effective oversight of the cases listed in the reports requires time-consuming research of paper case files to identify case status. In addition, the reports that the database produces are populated with information that, as we described in an earlier section, is inaccurate and incomplete. This brings into question how useful these reports can be.

According to its manager, the division created its first overall workload report—a Monthly Executive Summary—in January 2011. The division populates this report using information contained in the database. The report captures information such as the number of cases waiting to be opened, based on applications and RAP sheets; the number of cases opened and closed during the month; the number of cases pending assignment to an analyst; and the number of cases pending assignment to an investigator. Our cursory review of this first report noted that it does not contain workload information related to other documents, such as school district reports or other notifications that can result in the division opening and investigating a case. However, because the division only started using this report in January 2011, we were unable to assess how useful it will be to the division in the future.

*The new case-tracking reports do not address all of the problems we identified during our review of the division's investigations of reports of educator misconduct.*



### Division of Professional Practices' Reports

#### Daily Application Summary and Application Aging Report:

Accounts for and tracks incoming applications from the Certification, Assignments, and Waivers Division and informs the Division of Professional Practices' (division) manager of the division's application workload of unopened cases for the purpose of determining staff workload priority.

#### Daily Incoming RAP Sheet/Attachment Report and Weekly RAP Sheet Status/Summary Report:

Tracks incoming reports of arrest and prosecution (RAP sheets) from the California Department of Justice and helps division staff determine which cases to open based on priority.

**First-Time DUI Person Notes Report:** Documents the incoming RAP sheets for which division staff do not pursue a case because the offense was a first-time charge of driving under the influence (DUI) and helps the division ensure it does not overlook a recurring pattern of minor misconduct.

#### Potential Letter of Inquiry/Mandatory Aging Report:

Tracks the most recent staff activity on the division's high-priority cases and helps the division manager follow up with staff and ensure they are making progress on these cases.

#### My Team—Advanced Notification of Activity Deadline Report and My Team—Manager Notification of Activities Exceeding Deadlines Report:

Summarizes and displays activities that are overdue or will become overdue by an indicated number of days.

#### Case Investigations Pending Letter of Inquiry Report:

Tracks the division's most serious cases likely to be reviewed by the Committee of Credentials and helps the supervising investigator assign these cases based on age and severity.

Source: [Commission on Teacher Credentialing](#).

In addition to the Monthly Executive Summary workload report, the division recently developed other reports that the division's manager believes provide many benefits, as shown in the text box. However, we found that the division could still improve the contents and use of the reports in several areas. For example, many of the division's new reporting tools lack information pertaining to case status that would allow the division's management to understand the reasons for delays in case processing time and to determine whether delays are due to staff mismanagement of the cases or related to reasons outside of the division's control. The division's manager informed us that division staff may spend more time on some cases than others. For example, according to the manager, the division may take longer to process some cases because it is waiting for an applicant's or credential holder's conviction or waiting for the court or arresting agency to send documents, or because it forwarded the case to the Attorney General's Office for processing.

However, we found that the division's reports do not always contain reasons to explain why cases included in these reports still appear to need the division's action. For example, we found cases that appeared to be waiting for the division's action for as long as 441 days included on the Application Aging Report, the report that, according to the manager, the division uses to determine the priority of the applications for a credential that require the division to perform additional investigations. In fact, this report shows that in December 2010, 17 percent of the applications that the division needed to investigate further were more than 180 days old, with

one application listed as being 1,025 days old. In another example, although the supervising investigator indicated that he uses the Case Investigations Pending Letter of Inquiry Report to assign cases to his staff, we found that he had not yet assigned one case that, according to the report dated December 15, 2010, was opened in September 2007. When we questioned division management as to the reasons older cases are included on these reports and appear to still be open or pending division action, division management stated that they would have to review the paper case files in order to understand the details of the cases and to respond to our inquiry. If

these reports do not contain information regarding the reasons staff have not recently worked on the older cases the reports contain, we question their usefulness.

Further, the division does not have a system or report to track its cases once it commences the investigation process. Specifically, the supervising investigator, who is responsible for assigning investigations, does not track specific cases through to committee review. Instead, he stated it is the responsibility of the staff assigned to the case to indicate in the database the committee review date for the case and to ensure the case is fully prepared by the date it goes to the committee. These cases are listed in agendas that a staff member prepares for committee meetings, but the supervising investigator does not perform any reconciliation to ensure the specific cases he assigned are reviewed by the committee. Additionally, according to the supervising investigator, staff have the ability to close a case within the database without scheduling it for the committee's review. Therefore, for these types of cases, the division is unable to ensure that staff have not erroneously closed a case before the committee reviews it. However, according to the supervising investigator, he is in the process of testing a report that will track these cases and expects to formalize the process in the next two to three months.

Additionally, the manager and supervising investigator stated that they use various reports as a tool to review employees' work. For example, they both indicated that they use the My Team–Advanced Notification of Activity Deadline Report (My Team report) to monitor staff's overdue activities and to identify whether staff require additional assistance with their workload, and the Potential Letter of Inquiry/Mandatory Aging Report to monitor staff progress on the most important cases. Although management stated that they discuss with staff concerns they note during their reviews of the reports, they do not document their reviews. The manager was able to provide examples of e-mails he sends to staff indicating what their priorities should be based on the information within the reports, and he stated that "staff noncompliance will continue to show on the My Team report as an overdue activity." However, because division management does not review completed activities performed by staff, they cannot know whether the My Team report provides an accurate reflection of overdue activities.

Furthermore, the report the manager stated he uses to determine workload and potential inventory issues, the My Team–Manager Notification of Activities Exceeding Deadlines Report, simply identifies the number of activities for which a staff member has exceeded the time frames established by division management. As we discussed earlier in this report, the manager indicated that these time frames are not performance standards but merely an

*The division does not have a system or report to track its cases once it commences the investigation process.*

index of processing times designed to provide an early warning of delays in processing cases. Our review of the report dated December 20, 2010, shows that division staff had 813 overdue activities related to cases. When we asked the manager whether this was an indication that the division was behind in its workload, the manager informed us that it was not. Instead, he stated that this report was not developed to determine whether the division was behind in its workload, but was, in part, meant to allow the division to reallocate workload among the staff.

Finally, the division does not include in its reports information necessary to ensure that it does not lose jurisdiction due to time-based statutes. According to the Education Code, any allegation of an act or omission by the holder of a credential except for an allegation of sexual misconduct with a minor or recurring conduct resulting in a pattern of misconduct must be presented to the committee for initial review within four years from the date of the alleged act or omission, or within one year from the date that the act or omission should reasonably have been discovered, with the initial review commencing on the date that the division mails the written notice to the applicant or credential holder informing the individual that his or her fitness to hold a credential is under review. Although the division maintains reports that include the date the case was opened and the overall age of a case, we found that it does not include in any of its reports the significant dates identified in the law. Having these dates available in a report would allow the commission to ensure that it does not lose jurisdiction over a case because it has exceeded the one- or four-year requirement. In fact, our review of the case files found one instance, although not for a serious crime, for which the commission did lose jurisdiction. According to the commission, it interprets the law to mean that the commission has one or four years from the time of conviction to begin an initial investigation. However, in response to an appeal of a recommendation for adverse action, an administrative law judge disagreed with the commission's interpretation, citing the plain language of the law. Nonetheless, the manager indicated that he was more concerned with the date since the last activity on a case rather than the overall age of the case because the overall age is not a good indication of whether a case is moving forward and is on track. Finally, the law also states that, without an extension from the commission chair, the committee shall conduct its formal review within six months of beginning its initial investigation. According to the division's Case Investigations Pending Letter of Inquiry Report procedures, division staff should enter the six-month date into the database when assigning a case to investigation. However, the supervising investigator informed us that the division does not use a report to specifically track this date.

***Although the division's reports include the date the case was opened and the overall age of a case, we found that it does not include the significant dates identified in the law.***

## Recommendations

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.

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.

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.

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.

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.

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.

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.

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.

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 the following:

- 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.
- Clear evidence of management review of reports intended to track the division's progress in its investigations of misconduct.
- Clear tracking of 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.

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

## Chapter 3

### **FAMILIAL RELATIONSHIPS CONTRIBUTE TO EMPLOYEES' PERCEPTIONS THAT THE COMMISSION ON TEACHER CREDENTIALING'S HIRING AND PROMOTION PRACTICES ARE COMPROMISED**

#### **Chapter Summary**

Familial relationships among the employees of the Commission on Teacher Credentialing (commission) appear to have a negative impact on many employees' perception of their workplace. We administered a survey to 188 commission employees, of whom 136 (72 percent) responded. The survey asked questions regarding familial relationships, nepotism, and employee favoritism at the commission, and their impact on the commission's hiring practices and the staff's ability to file a complaint without fear of reprisal. Of the employees who responded to our survey, 40 percent felt that familial relationships or employee favoritism compromised the commission's hiring and promotion practices. In fact, employees responding to our survey provided the names of 24 previous or current employees at the commission that they perceived as having familial relationships with one another. When we reviewed the commission's hiring procedures and processes and its nepotism policy, we identified some flaws that may have given rise to these perceptions. For example, we found that the commission did not have a complete and current set of approved hiring procedures and, in some cases, was unable to provide documentation supporting its justification for appointments. Consequently, the commission is vulnerable to allegations that its hiring decisions are unfair and that employment opportunities are not afforded equally to all qualified candidates.

The commission's processes for filing Equal Employment Opportunity (EEO) complaints and grievances are intended to mitigate the fear of retaliation by allowing employees to file EEO complaints or grievances with designated personnel and outside agencies instead of with their direct supervisors. However, when asked whether they had filed a grievance or EEO complaint with the commission, 7 percent of the survey respondents indicated that they had filed a grievance and 3 percent reported filing an EEO complaint. Although it would appear that some of its employees are aware of the commission's policies regarding complaints and grievances and have taken advantage of the process, some may be unaware of the complaint processes and others may have refrained from taking such actions because of their fear of retaliation. In fact, 43 percent of those employees who responded to our survey indicated that they would have some fear of retaliation if they

were to file either a grievance or an EEO complaint. Additionally, 21 percent of the employees responded that they were not aware of the EEO complaint process, and 33 percent indicated that they were not aware of the grievance process. Thus, we believe the commission could do a better job of informing employees of these processes and explaining the protections they provide.

### Recent Exam and Appointment Decisions May Have Contributed to Employees' Negative Perception of the Commission's Employment and Promotion Practices

In general, the survey responses indicated that a large percentage of commission employees have a negative perception of the commission's employment and promotion practices. Specifically, 40 percent of the employees who responded to our survey indicated that they felt the commission's hiring and promotion practices were compromised by familial relationships or employee favoritism, and nearly half of these employees responded that this was often a problem. A survey that the commission itself conducted in 2010 had similar results. Specifically, 31 percent of the respondents to the commission's survey disagreed with the statement: *Eligible employees in my division are promoted based on merit.* Furthermore, 26 percent of the employees who responded to our survey believed that familial relationships among commission employees negatively affect supervision, security, or morale and/or create a conflict of interest.

To better understand the survey respondents' perceptions, we asked them to provide additional comments related to some of the questions. The text box provides examples of commission employees' comments related to familial relationships and employee favoritism at the commission. We also asked respondents to voluntarily identify known relationships among commission employees to ascertain the extent of familial relationships within the commission. Respondents provided the names of 24 current and previous employees who they perceived are or were at one time related to one another. Employees responding to our survey also included in their comments the names of some commission employees who they perceived as being favorites or personal friends of those in management positions.

#### Examples of Comments Made by Commission on Teacher Credentialing Employees Responding to Our Survey Regarding Familial Relationships and Favoritism at the Commission

- When we took an OT (office technician) exam, one sister was on the panel while the other was one of the competitors.
- When the Commission on Teacher Credentialing (commission) employed student assistants, three of the student assistants were related to staff.
- In terms of familial relationships, relatives are hired and promoted over equally or better qualified employees.
- We currently have managers that have hire[d] six friends from their previous departments.
- When going through the hiring process they ignore the requirements and just hire whomever they want. The person they hire is usually a friend of the hiring manager.
- Many individuals are hired because they are friends with a manager or supervisor. Many individuals are given promotions because they are favored by the manager. Management will put someone in a classification that they do not have to clear through DPA (Department of Personnel Administration) or SPB (State Personnel Board) in order to give that person a promotion.

Source: Comments included in commission employee responses to the Bureau of State Audits' September 2010 survey.

We reviewed the commission's nepotism policy and hiring and promotion practices to determine whether it had controls in place to mitigate the negative impacts that familial relationships appear to have on the perspective of commission employees. The commission updated its nepotism policy during our fieldwork in October 2010. In its previous nepotism policy, the commission indicated its intent to ensure that its civil service system was free of favoritism resulting from personal relationships in the areas of hiring, evaluations, and promotions. The new policy is designed to reinforce management's commitment to fair and impartial employee selection, supervision, and evaluation and to create a fair and merit-based employment environment. According to the new policy, supervisory and management staff within a given department or division are responsible for implementing and conforming to the policy, and supervisors and managers should be aware of potentially sensitive situations involving personal relationships within their areas of responsibility.

As part of our review of the controls it has in place over its hiring and promotion decisions, we asked the commission to identify the specific policies and procedures it uses when making these types of decisions. However, we found that the commission's staff struggled to identify the specific policies and procedures the commission uses. More specifically, when we first asked staff in the commission's office of human resources for any policies and procedures regarding hiring and promotions, they pointed to various manuals, guides, and handbooks developed by the State Personnel Board (board), the Department of Personnel Administration, and the Department of General Services. Although we agree that it is appropriate for the commission to refer to the guidance provided by these agencies when making staffing decisions, we continued to inquire about hiring guidelines developed specifically for the commission. Accordingly, we were surprised when, after our repeated requests and more than two months into our review of its hiring and promotions practices, the human resources manager told us that the commission also relies on a draft hiring guide dating back to 2007 that has not been finalized. Although the human resources manager indicated that the commission relies on this draft hiring guide, she cautioned us that the guide is outdated and underutilized by commission staff, and that the commission is in the process of implementing a new set of hiring requirements. Further, the human resources manager indicated that the commission hired an employee in February 2010 whose function was to update all of the commission's policies and procedures; however, this employee was redirected to work on other commission priorities and has not updated the hiring guide. By not clearly identifying for its human resources staff and hiring managers the standards they should be following when making

*The commission relies on a 2007 draft hiring guide that is outdated and underutilized by commission staff, and the commission is in the process of implementing a new set of hiring requirements.*



hiring and promotion decisions, the commission risks making unfair or illegal decisions regarding exams and appointments and may be more susceptible to accusations of unfair hiring practices.

To ensure that the commission was following appropriate guidelines when making decisions involving hiring and promotions, we selected three exams that the commission conducted between January and September 2010 and used to establish eligibility lists. One of these exams had been mentioned by survey respondents as an example of an employee or candidate receiving special treatment because of a familial relationship. We also selected a sample of 10 appointments to review from among the names of staff identified in the survey responses as having familial relationships with one another, or as having a personal relationship with other commission employees. We limited our sample to those appointments that occurred between November 2008 and November 2010 because we wanted to focus on the commission's most recent employment decisions. Our sample included the appointment of three student assistants, three promotions, three transfers from another agency, and one training and development appointment. Our review identified several concerns that may have given rise to some of the employees' negative perceptions of nepotism within the commission.

***We found that the commission's office of human resources allowed the eligibility exam to take place even though the human resources manager became aware that one of the candidates was related to a member of the exam panel.***

Although the commission appears to have followed appropriate guidelines when it administered the exams to establish two of the three eligibility lists we reviewed, it did not do so for the third exam. Specifically, we found that the commission's office of human resources allowed the eligibility exam to take place even though the human resources manager became aware that one of the candidates was related to a member of the exam panel. According to the California Code of Regulations, if a candidate taking an oral exam is related to a member of the exam panel, the interviewer is required to disqualify himself or herself from the interview and any discussion about the interview and the rating of the candidate. The commission's human resources manager, who was also a member of the exam panel, allowed the examination to continue even though she became aware of the familial relationship. Subsequent to the exam, the commission's office of human resources informed the candidates of the exam results. However, according to the human resources manager, after some of the commission's managers complained about the exam, the office of human resources decided to cancel the original exam and the eligibility list that resulted from it. The human resources manager indicated, however, that when she contacted the board to cancel the eligibility list, she was told that no list existed. She later learned that it did not exist because staff within the office of human resources had not entered the exam results into the board's system correctly. Ultimately, the commission held a second exam to establish an eligibility list for

the same position. This second exam was also part of our sample. In response to an appeal related to these two exams, the board ruled that the commission had applied a correct remedy by invalidating the original exam. The situation just described was mentioned by several employees who responded to our survey as an example of the type of favoritism they believe has occurred at the commission.

In addition, several survey respondents expressed concerns about the number of student assistants the commission employed who have familial relationships with others at the commission or who have personal relationships with those in hiring positions. In fact, one of the organizational charts we reviewed shows that at one time five of the student assistants who survey respondents identified as being related to others at the commission worked in one of the commission's divisions, although not in the same division as their family members. We chose a sample of three appointments of student assistants from among those who the respondents identified and found that, although the commission followed appropriate guidelines when it hired two of the student assistants in our sample, it did not do so when it hired the third student assistant. Specifically, we found that one student assistant the commission hired, who survey respondents noted was related to another employee at the commission, submitted her application for employment 49 days after the final filing deadline, yet the commission accepted the application. Furthermore, the division hiring manager who hired this student did not interview her for the position, as was done with the other student assistants in our sample, because, according to the hiring manager, she had previously worked for him and he knew she had the experience he was looking for in his unit. Additionally, the human resources manager informed us that the office of human resources does not always maintain proper documentation to support the hiring of student assistants.

Finally, our review of seven other appointments found that the office of human resources did not always maintain documentation to support the commission's hiring decisions. Specifically, the commission's draft hiring procedures state that the hiring supervisor must have predetermined, job-related rating criteria for interview questions and screening. In addition, the draft procedures state that at the conclusion of the hire, the hiring supervisor must send all the applications and interview materials for the recruitment to the human resources analyst for filing and retention. These documents must include all screening criteria, rating sheets, interview questions, interview rating sheets, reference check sheets, and any other material used in the selection process. However, we found that the commission did not retain hiring documentation or appointment justifications for four of the seven appointments we reviewed. Additionally, the commission's

*One student assistant the commission hired, who survey respondents noted was related to another employee at the commission, submitted her application for employment 49 days after the final filing deadline, yet the commission accepted the application.*

*By not following its hiring practices and procedures for all appointments, including student assistants, the commission may not be able to deflect accusations and perceptions of favoritism when it hires applicants who are related to commission employees or are friends of those in management positions.*

draft hiring procedures require that the human resources analyst mark candidates' eligibility on their applications before sending the applications to the hiring supervisor. We were unable to determine the eligibility for one appointment due to a lack of documentation. While the remaining six appointments we tested were eligible candidates, the office of human resources did not indicate candidate eligibility on four of these six applications. By not following its hiring practices and procedures for all appointments, including student assistants, the commission may not be able to deflect accusations and perceptions of favoritism when it hires applicants who are related to commission employees or are friends of those in management positions. Consequently, the commission is vulnerable to allegations that its hiring decisions are unfair and that employment opportunities are not afforded equally to all qualified candidates.

### **Many Surveyed Employees Reported That They Were Not Aware of the Commission's Grievance Process or EEO Policy**

Responses to the survey we conducted of the commission's employees found that 33 percent of the 136 employees who responded were unaware of the commission's grievance process and 20 percent were unaware of the commission's EEO policy. Furthermore, 43 percent of the survey respondents stated that they have some level of fear of retaliation if they were to file a grievance or EEO complaint, with 12 percent expressing a high level of fear. A survey that the commission administers annually reflected similar employee beliefs and, while the two most recent surveys showed a declining trend in the percentage of respondents indicating that they feel they cannot speak up about issues without facing retaliation, responses to our survey indicate the need for continued improvement.

The commission's employees can file complaints, including ones alleging violations of EEO laws that prohibit employment discrimination and ones alleging violations of their terms of employment. The commission's EEO policy encourages employees to discuss their complaint issues with supervisors or other commission management on an informal basis first, but also informs commission employees that they have the opportunity to initiate formal complaints through the commission's director of human resources or through an outside organization, such as the California Department of Fair Employment and Housing or the federal EEO Commission. Employees can file EEO complaints alleging sexual harassment or discrimination based on race, religious affiliation, gender, or other protected characteristics. California and federal laws provide protections to employees

making complaints of discrimination under those laws. For example, California law states that employers may not discharge, expel, or otherwise discriminate against a person who opposed an unlawful employment practice or filed a complaint, testified, or assisted in a proceeding regarding discriminatory employment practices based on characteristics such as race, age, or sexual orientation. While the commission's EEO complaint process is designed to resolve issues on an informal basis, it ultimately allows employees to file EEO complaints with designated personnel and outside agencies instead of their direct supervisors, and thus mitigates the threat of retaliation for filing a complaint.

With respect to grievances, bargaining unit agreements and rules established by the Department of Personnel Administration define separate processes for employees represented by bargaining units and those that are not represented. According to the director of the administrative services division, although the commission's administrative manual contains a section on grievance procedures, those procedures are superseded by the procedures included within the commission employees' bargaining unit contracts. She also stated that managers and supervisors consider informal grievances, which typically are not reported to the office of human resources. Finally, according to its manager, the office of human resources takes a "hands-off" approach to grievances and directs employees to the Department of Personnel Administration's Web site for more information.

To ensure that its employees are aware of its EEO policy, the commission posts the policy on its employee intranet for all commission employees to view. When we asked whether the commission provides training to its employees on its EEO and grievance processes, the director of the administrative services division, who is also the EEO officer, informed us that employees are directed to review the various policies posted on the employee intranet for EEO issues, and that the commission does not provide training on the grievance process. She also indicated that new employees meet with their supervisor or manager to discuss items outlined in the orientation checklist that employees sign during the new employee orientation. However, when we reviewed the checklist that the commission provided, we found that it did not include an item specific to the commission's EEO policy until after the commission revised its policy in January 2011. Additionally, the director of the administrative services division told us that the commission does not provide any ongoing periodic training to its employees on any of these policies or procedures. Although the commission believes it has made its employees aware of these policies, 33 percent of the employees

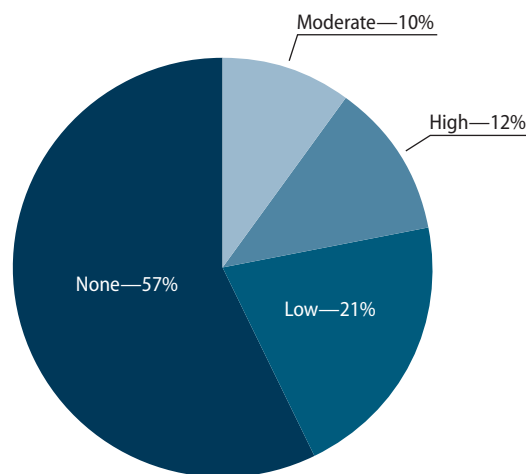
*The commission did not include an item specific to the commission's EEO policy as part of its new employee orientation until after the commission revised its policy in January 2011.*

who responded to our survey indicated they were unaware of the process for filing a grievance and 21 percent indicated they were not aware of the commission's EEO policy.

When we asked the employees surveyed whether they had ever filed a grievance or EEO complaint with the commission, 7 percent of the respondents indicated that they had filed a grievance and 3 percent reported that they had filed an EEO complaint. When we asked the commission to provide a list of complaints and grievances filed within the last two years, the commission reported that employees had filed a total of two grievances and two EEO complaints during that period. Thus, it would appear that some of its employees are aware of these policies and have taken advantage of the grievance and complaint process. However, others may be unaware of the complaint processes, or they may have refrained from taking these actions because of a fear of retaliation.

Indeed, as previously stated and as shown in Figure 5, roughly 43 percent of the employees who responded to our survey indicated that they have some fear of retaliation if they were to file either a grievance or an EEO complaint.

**Figure 5**  
**Level of Fear of Retaliation Among Survey Respondents if They Were to File a Grievance or Equal Employment Opportunity Complaint (by Percentage of Respondents)**



Source: Commission on Teacher Credentialing employee responses to the Bureau of State Audits' September 2010 survey.

The commission's most recent annual survey showed a similar level of fear among commission employees. In 2008 the commission administered an agencywide employee survey, and more than 30 percent of the respondents either disagreed or strongly disagreed with the statement: *People at CTC (Commission on Teacher Credentialing) can speak up without fear of retribution.* In 2009 this value changed to 32 percent disagreeing or strongly disagreeing, and in 2010, 21 percent of survey respondents stated that they either disagreed or strongly disagreed with the statement.<sup>4</sup> While the commission's surveys reflect a declining trend over the past two years in the percentage of respondents indicating that they cannot speak up about issues without fear of retaliation, the responses to our survey reflect the need for continued improvement. Consequently, we believe opportunities exist for the commission to mitigate its employees' fear of retaliation for filing complaints by thoroughly explaining the EEO complaint and grievance processes, and by having management express its commitment to following these processes diligently and protecting employees from any retaliation.

### Recommendations

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 do the following:

- 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.
- 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 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.

<sup>4</sup> In 2010 the statement read, *I can speak to management about issues without fear of adverse consequences.*

To ensure that employees understand their right to file either an EEO complaint or a grievance, and to reduce any associated fear of retaliation, the commission should do the following:

- 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.

We conducted this audit under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the scope section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

Date: April 7, 2011

Staff: Denise L. Vose, CPA, Audit Principal  
Norm Calloway, CPA  
Myriam K. Arce, MPA  
Jason Beckstrom, MPA  
Angela C. Owens, MPPA  
Andy Sywak, MPP

IT Audit Support: Michelle J. Baur, CISA  
Sarah Rachael Black, MBA  
Richard W. Fry, MPA

Legal Counsel: Stephanie Ramirez-Ridgeway, JD

For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

## Appendix A

### ADDITIONAL INFORMATION IN THE AUDIT REQUEST

Tables A.1 and A.2 on the following page present information obtained from the Credentialing Automation System Enterprise (database) of the Commission on Teacher Credentialing (commission) that identifies information as requested by the Joint Legislative Audit Committee (audit committee). As noted in the Scope and Methodology section of this report, the information presented in tables A.1 and A.2 is based on data we determined was not sufficiently reliable. Nevertheless, we reported the results of our analysis of these data, because it is the only source of the information available. Specifically, Table A.1 shows, by calendar year, the number and type of reports of misconduct the commission processed, the number of cases that staff closed without review by the Committee of Credentials (committee), the number of committee recommendations for adverse action, and the number of respondents who requested an administrative hearing regarding those adverse actions. Table A.2 shows the amount of time the Division of Professional Practices (division) took to process those cases that it did not send to the committee.

In October 2010 the commission provided us with an extract of its database for all cases it opened from January 2007 through June 2010. The audit committee asked us to identify the number and type of reports the commission received and processed. However, because the commission does not always record in the database the number of reports of misconduct it receives, we could not provide all this information. Nevertheless, in Table A.1 we do present the number of reports of misconduct the commission processed that we could identify. Further, we were asked to identify the number of self-disclosures of misconduct. However, we could only provide the self-disclosures on application forms submitted electronically because the commission's database does not contain the self-disclosures submitted by hard copy. Since only 17 percent of the applications were submitted electronically and presenting only this segment could be misleading, we do not present the number of self-disclosures of misconduct. Additionally, we were asked to identify the number of allegations involving reports of criminal convictions closed without committee review. However, we were unable to identify this information because the California Department of Justice sent more than 291,000 reports of arrest and prosecution for both credential holders and credential applicants during the period of January 2007 through June 2010 which contain both arrests and convictions, so we could not electronically differentiate between arrest reports and conviction reports. Finally, the audit committee asked us to identify the number of reports of misconduct and allegations that the commission did not pursue because of time-based statutes, but again we were unable to provide this information because the commission does not track time-based statutes in its database.



**Table A.1**  
Additional Information Specified in the Audit Request

AUDIT REQUEST	2007	2008	2009	2010*	TOTALS
<b>Number and type of reports the Commission on Teacher Credentialing (Commission) processed</b>					
Affidavits	42	17	20	13	92
School reports	259	250	246	74	829
National Association of State Directors of Teacher Education and Certification (NASDTEC) notifications <sup>†</sup>	179	76	14	14	283
Testing agency misconduct reports	6	0	12	0	18
Reports of arrest and prosecution (RAP sheets) <sup>‡</sup>	2,694	3,219	2,887	2,863	11,663
<b>Number of cases staff closed that the Committee of Credentials (committee) did not review</b>					
Cases closed without committee review <sup>§</sup>	2,922	2,629	4,188	2,504	12,243
<b>Number of committee recommendations for adverse action and respective requests for appeal</b>					
Committee recommendations for adverse action	48	394	441	320	1,203
For the adverse actions recommended, the number of respondents requesting an administrative hearing <sup>  </sup>	0	70	139	129	338

Source: Bureau of State Audits' analysis of the Commission's Credentialing Automation System Enterprise (database).

\* Data current through October 18, 2010.

† Includes the number of NASDTEC reports in the database, not the number of NASDTEC reports that the association sent.

‡ Includes the number of RAP sheets in the database, not the number of RAP sheets that the California Department of Justice sent.

§ Cases for which commission staff were responsible for closing (credential holders) or granting a credential (credential applicants).

|| By calendar year of adverse action recommendation.

**Table A.2**  
The Number of Days the Division of Professional Practices Took Between Opening and Closing a Case for Cases the Committee of Credentials Did Not Review That Were Opened From January 2007 through June 2010

DAYS	NUMBER OF CASES	PERCENTAGE OF CASES
0 to 29	5,674	48.6%
30 to 59	1,280	11.0
60 to 89	768	6.6
More than 90 days	3,947	33.8
<b>Totals</b>	<b>11,669*</b>	<b>100.0%</b>

Source: Bureau of State Audits' analysis of the Commission on Teacher Credentialing's Credentialing Automation System Enterprise.

\* This total does not include cases closed in fewer than zero days that appear to be errors in the data, and therefore will not match the total in Table A.1

## Appendix B

### SURVEY RESPONSES FROM EMPLOYEES AT THE COMMISSION ON TEACHER CREDENTIALING

Table B presents certain responses to a survey we distributed to employees working at the Commission on Teacher Credentialing (commission) as of August 31, 2010. The survey asked questions regarding the processes for filing Equal Employment Opportunity (EEO) complaints and grievances, as well as employees' perceptions of familial relationships among commission staff. To distribute the survey, the commission provided a listing of all employees' e-mail addresses.

Of the 188 employees surveyed, we received 137 responses, but we excluded one as it was from an e-mail address to which we did not distribute the survey. We reviewed the remaining 136 responses, which represented a response rate of 72 percent. We compiled and analyzed the results, which are presented here. As part of our survey, we provided employees with the option of providing additional information about the division in which they work, their employee classification, and the length of time they have been employed by the commission. The table indicates the number of employees providing this optional information but does not give the actual comments they provided.

**Table B**  
Survey Results Related to Grievances, Equal Employment Opportunity Complaints, and Familial Relationships

QUESTION	PERCENTAGE OF YES RESPONSES	PERCENTAGE OF NO RESPONSES
Are you aware of the commission's process for employees to file a grievance?	67%	33%
Are you aware of the commission's Equal Employment Opportunity (EEO) policy?	79	21

QUESTION	NUMBER OF RESPONDENTS	PERCENTAGE OF RESPONDENTS
Have you ever filed a grievance or EEO complaint with the commission?		
Grievance	8	6%
EEO complaint	2	2
Both	2	2
Neither	124	90

*continued on next page . . .*

QUESTION	NUMBER OF RESPONDENTS	PERCENTAGE OF RESPONDENTS
Are you satisfied with the grievance or EEO complaint processes at the commission?*		
<b>Grievance</b>		
Not satisfied	5	50%
Somewhat satisfied	4	40
Completely satisfied	1	10
<b>EEO Complaint</b>		
Not satisfied	3	75%
Somewhat satisfied	1	25
Completely satisfied	0	0
Do you fear retaliation from your supervisor or upper management if you file a grievance or EEO complaint?		
None	78	57%
Low	28	21
Moderate	14	10
High	16	12
QUESTION	PERCENTAGE OF YES RESPONSES	PERCENTAGE OF NO RESPONSES
Are you related to anyone else who works for the commission?	7%	93%
Is your immediate supervisor or manager related to another person who works at the commission?	9	91
QUESTION	NUMBER OF RESPONDENTS	PERCENTAGE OF RESPONDENTS
If you are a supervisor or manager, are any of your employees related to another person who works at the commission?		
Yes	9	7%
No	16	12
Not applicable—I am not a supervisor/manager	111	81
QUESTION	PERCENTAGE OF YES RESPONSES	PERCENTAGE OF NO RESPONSES
Are familial relationships adversely impacting your ability to work professionally?	8%	92%
For the above question, we asked respondents to provide any comments or explanation they felt appropriate and explained that these comments could appear in our final report attributed to a commission employee.	15 Responded	11 Responded
QUESTION	PERCENTAGE OF YES RESPONSES	PERCENTAGE OF NO RESPONSES
Has the presence of familial relationships prevented you from filing a grievance or EEO complaint because you feared negative repercussions?	8%	92%
For the above question, we asked respondents to provide any comments or explanation they felt appropriate and explained that these comments could appear in our final report attributed to a commission employee.	8 Responded	6 Responded
QUESTION	NUMBER OF RESPONDENTS	PERCENTAGE OF RESPONDENTS
If you are a supervisor or manager, have you ever been reluctant to take disciplinary action against an employee because of his or her familial relationship to another employee of the commission?		
Yes	1	1%
No	23	18
Not applicable—I am not a supervisor/manager	107	81

QUESTION	NUMBER OF RESPONDENTS	PERCENTAGE OF RESPONDENTS
Do familial relationships among current commission employees create either of the following?		
Adverse impact on supervision, security, or morale	5	4%
Potential conflict of interest	12	9
Both	17	13
Neither	97	74
Are the commission's hiring and promotion practices compromised by familial relationships or employee favoritism?		
Never	78	60%
Sometimes	28	21
Often	25	19
For the above question, we asked respondents to provide any comments or explanation they felt appropriate and explained that these comments could appear in our final report attributed to a commission employee.	45	33
We also asked respondents to identify up to 10 known relationships between commission employees related by blood, marriage, domestic partnership, or adoption and to only identify relationships that have the potential to create an adverse impact on supervision, security, or morale, or involve a potential conflict of interest.	43 <sup>†</sup>	32
How long have you worked for the commission? <sup>‡</sup>		
Less than five years	47	35%
5–10 years	21	15
10–15 years	32	24
15–20 years	7	5
More than 20 years	18	13
Did not answer	11	8
QUESTION	NUMBER OF RESPONDENTS	PERCENTAGE OF RESPONDENTS
In which division do you work? <sup>‡</sup>		
Administrative Services Division	7	5%
Certifications, Assignments, and Waivers Division	50	37
Division of Professional Practices	31	23
Enterprise Technology Services Section	12	9
Professional Services Division	22	16
Did not answer	14	10
Please select your role: <sup>‡</sup>		
Analyst	58	43%
Legal	6	4
Manager or career executive assignments	19	14
Supervisor	4	3
Support staff (nonsupervisory)	32	24
Did not answer	17	12

Source: Commission employees' responses to the Bureau of State Audits' September 2010 survey distributed to 188 commission employees.

\* Additional question for respondents who answered the question *Have you ever filed a grievance or EEO complaint with the commission?*

<sup>†</sup> Identified one or more relationships.

<sup>‡</sup> Optional survey questions.

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*(Agency comments provided as text only.)*

Commission on Teacher Credentialing  
1900 Capitol Avenue  
Sacramento, CA 95811

March 24, 2011

Ms. Elaine M. Howle, CPA\*  
State Auditor  
555 Capitol Mall, Suite 300  
Sacramento, CA 95814

Dear Ms. Howle:

The Commission on Teacher Credentialing staff has reviewed the draft audit findings entitled "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" received March 28, 2011. As a state agency we appreciate the review of our policies and practices, we believe that there is always room for improvement. First and foremost the Commission takes its role of enforcing professional discipline very seriously balancing the safety of the California school children and the due process rights of educators. It is important to note the Commission did not miss any deadlines established in the Education Code in any of the cases cited in the report did nor were there any reported cases of children being harmed. However, as the report demonstrates in some instances the Division of Professional Practices (DPP) could have processed some of the cases more efficiently. It should be noted that other cases listed in the report were delayed due to statutory timelines and court document delays, both of which are outside the control of the Commission. Specific examples are noted in our response to the Summary and Chapter 1. ①

As noted in the report, DPP has been in the process of moving from a paper based process to a computer based process. Many of the database omissions noted in the report stem from the fact that the data was in the paper files. This transition from a paper based system to a computer based system occurred during the same time frame as the data chosen for reviewed by the Bureau of State Audits. Consequently one would expect the data in the computer to be incomplete, however when the auditors reviewed the paper files they did not find errors. ②

The report also notes that there was a backlog of reports of arrest and prosecution (RAP sheets). However the report fails to emphasize that the backlog was identified nine months prior to this audit and once identified by management, additional resources were added to DPP to process the backlog. As noted in the report, these RAP sheets had been prioritized and the RAP sheets in the backlog consisted of reports of arrests and minor offenses. The report does not note that all RAP sheets are processed on a daily basis and currently there is no backlog and there hasn't been a backlog since June 2010. ③

Attached you will find the Commission's response to the individual recommendations made in the report as well as our response to the Summary, Chapter 1, Chapter 2 and Chapter 3. As you will see in our response to the recommendations, we concur with almost all of the recommendations

Sincerely,

*(Signed by: Dale A. Janssen)*

Dale A. Janssen  
Executive Director

Attachment

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

BSA Recommendations	Commission Responses
<p><b>Recommendation One:</b> The commission should revise its strategic plan to identify the programmatic, organizational, and external challenges that face the division and the committee in overcoming those challenges, and the goals and actions necessary to accomplish its mission.</p>	<p><b>Response:</b> The Commission will consider the recommendations of the audit report when it next revises its strategic plan.</p>
<p><b>Recommendation Two:</b> 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><b>Response:</b> The Commission concurs with the recommendation and will start to collect data to identify needed staffing levels.</p>
<p><b>Recommendation Three:</b> 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. After the commission receives the attorney general's legal advice regarding the division's authority to close investigations without committee review, the commission should take all necessary steps to comply with the attorney general's advice.</p>	<p><b>Response:</b> The Commission will consider whether or not it is necessary to request an opinion from the Attorney General.</p>
<p><b>Recommendation Four:</b> 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><b>Response:</b> Whether or not an opinion from the Attorney General is sought, any decision regarding changes to the current Committee structure should only be considered following a study by the Commission, stakeholders, and policy makers.</p>
<p><b>Recommendation Five:</b> 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><b>Response:</b> The Commission concurs with the recommendation and will assign staff to develop comprehensive written procedures.</p>

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<p><b>Recommendation Six:</b> The division should provide training and oversight, and should take any other necessary steps, 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.</p>	<p><b>Response:</b> The Commission concurs with the recommendation and will begin training and oversight to ensure the database has accurate data.</p>
<p><b>Recommendation Seven:</b> To comply with the law and reduce unnecessary workload, the division should continue to notify Justice of individuals for whom the division is no longer interested in receiving RAP sheets.</p>	<p><b>Response:</b> The Commission concurs with this recommendation and implementation was initiated in March 2011.</p>
<p>⑤ <b>Recommendation Eight:</b> 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, the division 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><b>Response:</b> The Commission concurs with the recommendation and implementation has already been initiated through the use of the CASE tracking system.</p>
<p>⑤ <b>Recommendation Nine:</b> To adequately address the weaknesses in its processing of reports of misconduct, the division should revisit management's 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"> <li>• Reducing the time elapsed to perform critical steps in the review process.</li> <li>• 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.</li> <li>• Prompt requests for information surrounding reports of misconduct from law enforcement agencies, the courts, schools, and knowledgeable individuals.</li> <li>• An understanding of the reasons for delays in investigating individual reports of misconduct without having to review the paper files for the cases.</li> </ul>	<p><b>Response:</b> The Commission concurs with the recommendation and implementation has already been initiated through the use of the CASE tracking system.</p>

<p><b>Recommendation Ten:</b> 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"> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul>	<p><b>Response:</b> The Commission concurs with the recommendations and will assign staff to develop a comprehensive hiring manual.</p>
<p><b>Recommendation Eleven:</b> 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"> <li>• Include in its EEO policy a statement informing staff members that they may make complaints without fear of retaliation.</li> <li>• Actively notify employees annually of its EEO complaint process and grievance process, including the protections from retaliation included in both.</li> <li>• Conduct training on its EEO complaint process on a periodic basis.</li> </ul>	<p><b>Response:</b> The Commission concurs with this recommendation and will assign staff to develop a revised EEO policy. However, the Commission does not agree with the recommendation to notify employees about the grievance process, as this is the role of the specific unions represented by Commission employees.</p>

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**Commission on Teacher Credentialing Response to:  
“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”**

**Response to Summary**

- ⑦ As the report states the Division of Professional Practices (Division) did experience a backlog in the processing of rap sheets that grew to unacceptable levels. We are pleased that the report recognizes the Commission’s efforts to eliminate this backlog and its successful efforts in doing so. In addition the report acknowledges that the Division has instituted new procedures, and better use of technology to prevent unnecessary delays, to identify workload problems and provide assistance in preventing future backlogs. We welcome the recommendations provided in the report to make the case tracking system more robust and provide improved data for future planning as well as accountability. Because the audit came shortly after the Division’s transition to the implementation of a new case tracking system that implementation is still ongoing and we are confident that when fully implemented as well as with the addition of the recommendations in this report future delays will be eliminated. Most significantly as a result of the implementation of new rap processing procedures in February 2010 electronic raps are now entered into the system the same day they are received, sorted by priority and tracked. In addition, paper raps are now scanned and entered into the system as part of the electronic file. 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.
- ① Despite the workload issues noted in the report during the period under review, the report notes that it has no evidence that any case was time barred by the statute of limitations and at all times the Commission met its statutory timelines for review. In addition, at no time did a delay cause a case to be closed because of the statute of limitations. The report notes that during this same time period the Division closed 48% of its cases within 30 days and 67% in less than 90 days. Finally, and most importantly the Commission has never had a complaint or a report that a delay in processing has caused harm to a student.
- ⑧ The cases cited in the report are troublesome when viewed in hindsight and without context. No one would disagree that if the allegations are proven to be true, the credential holder should no longer be allowed to continue to hold a credential. However, each case must be viewed in context and within the laws and rules that govern the discipline process.
- ⑨ There is a constitutional guarantee of a presumption of innocence until proven guilty. An arrest without more does not give rise to jurisdiction for the Committee to conduct an investigation of a credential holder. The Division receives many notices of arrests and tracks the arrests to determine if charges are filed and whether there is a conviction and sentencing.

In addition to its own enabling statute and regulation, the Division is required to follow the rule of law as determined by the constitution, case law and other statutes impacting or limiting its actions.

Except in certain cases involving serious felonies, credential holders by law maintain their credentials and have a right to have an existing credential renewed during the entire review process. This is a result of a basic constitutional right termed "due process" which provides that a person cannot generally be deprived of a property right without notice and the opportunity to be heard. The statutory scheme approved by the legislature is premised upon such due process principles.

As a result of improvements implemented since February 2010, upon receipt of a rap sheet a case is identified as a potential mandatory and special tracking procedures are followed. The case, if it continues to be a mandatory, is followed throughout the criminal justice process from charges being filed, court appearances and continuances and finally a conviction, acquittal or hung jury and then sentencing. The practice of the Division is to track such cases and then following sentencing if there is a conviction, revoke the credential. The audit report criticizes the Division's handling of the mandatory offenses in two respects: failing to identify potential mandatories and undue delay in finalizing a mandatory. The first criticism underscores the difficulties in this area: Of the six cases identified, one case was never a potential mandatory; in two others, the only raps received were notifications that charges had been dropped and finally a case correctly identified by staff as a potential mandatory became a drug diversion case and was no longer a potential mandatory.

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The criminal justice system does not always operate quickly. If a case is fully adjudicated it can take years to conclude. In addition there are actions taken which preclude the Division from acting on such cases where the credential holder is allowed to enter drug diversion, or when a court stays sentencing for a period of time and there is no final action. It was not uncommon prior to 2009 for a credential holder charged with a mandatory revocation offense to enter into a plea bargain that allowed a plea to an offense that was not a mandatory offense but with conditions of probation that limit contact with minors. Until legislation sponsored by the Commission which was effective January 2009 under such circumstances the credential holder maintained the credential until the discretionary review was completed (Education Code §44423.6, added by Stats. 2008, c.578).

The summary does cite several conditions that it concludes were poor practices that in turn led to a workload backlog. It also lists average times it took to process a case. It states there were unreasonable delays and cites examples where the data in the case tracking system is incomplete. In doing so several important facts are overlooked.

1. Many of the delays are a result of external factors beyond the Commission's control such as timely responses to requests for information from police agencies and courts as well as school districts as well as the varied length of time it can take to conduct a police investigation or prosecute a case in court. As a result it is impossible to state that any case is average. The important factor to consider is that statutory deadlines were met.
2. In both the summary and throughout the report there are numerous examples provided where an activity was not completed based on the erroneous conclusion that if a record of that activity was not found in the Division's newly implemented case tracking system, the activity or task either wasn't done or was not done in a timely fashion. As stated above, during the period in question the Commission implemented the new case tracking system, however it continues to be primarily

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- ⑭ a paper based system and will be for several years to come. As such, cases which were not listed in the audit report as not being “worked” because the information could not be found electronically were in fact processed and information sought without delay particularly with respect to potential mandatory revocation offenses and there is evidence in the paper based file that such activity occurred. Other information could not always be found electronically because some of the cases reviewed were prior to implementation of the system and others were while staff was in process of transitioning and being trained on how to correctly use the new system. We do acknowledge that this timeliness cannot always be demonstrated with respect to cases prior to the case tracking system which was precisely why the system was implemented. The case tracking system will give the manager immediate visibility of the technicians workload and ensure cases are processed timely.
3. Setting an average time does not take into account the type of misconduct involved or the need to prioritize certain cases. We acknowledge that some cases took longer to open, process and request documents. Whenever possible these cases involved lower level misconduct such as a misdemeanor shoplifting case or a report of contract abandonment, neither of which would result in a revocation of a credential. However in some of the cases noted that were prior to the case tracking system, there were unreasonable time delays which again reiterates the need for the case tracking system.
- ⑭ The finding on page 33 that in 11 of 29 cases sampled it took more than 80 days to open a case is reflective of the prior process. Of those cases one ended in a revocation, six were suspensions and the remainder grants, closes and public reprovals. The sample used did not include any rap sheets or applications received subsequent to the implementation of the new case tracking system and none of the cases listed were opened after implementation of the new system.
- ⑭ The audit report also concludes that the Division should not await the conclusion of a criminal prosecution but should begin a dual investigation. This issue was discussed with several members of staff and cogent and lengthy reasons were provided to the BSA regarding the potential problems that could occur. The audit report does not give any merit to experienced legal staff who have considerable knowledge regarding the criminal justice system and its difficulties, it does not mention the considerable resources needed if the dual investigation suggestion were to be implemented. Nor, is there any credence given to the very real danger that rushing a case to review before a criminal prosecution is completed could result in a finding of no probable cause and the case could not be reopened if other information or evidence was obtained. Waiting for the conclusion of local investigations and prosecutions is not always efficient but it is effective in that a criminal conviction for a mandatory crime results in immediate revocation of the credential. Such results cannot always be guaranteed under a discretionary system. Some of the examples cited as cases where the Division should have taken this approach were cases that did not end in a successful prosecution and in some instances did not result in charges being filed after lengthy investigation following arrests for serious offenses. There is no reliable way to predict when this will occur. It is for these reasons that we don't believe a dual investigation is a prudent use of existing resources and could have unintended detrimental outcomes and risks that outweigh the delays noted.

The summary states that the delays in investigating cases potentially allowed educators to retain a credential. It is true that any delay in a case involving credential holders potentially allows credential holders to retain a credential however not all misconduct reviews result in a finding of misconduct and as stated above external factors can cause lengthy delays. Finally, every attempt is made to prioritize misconduct, however when the Division receives notice of a non-priority misdemeanor and prioritizes accordingly there is no reliable method to predict that in a short period of time there will be multiple arrests for the same offenses although the priority does and should change at that point as facts change. The examples used in the report to support this claim described in the summary as “some of the 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 Commission does take very seriously its responsibility to avoid delays whenever possible particularly with respect to serious cases and the fact that in many cases there is a potential for harm. As noted previously several types of external factors such as a lengthy criminal investigation, failure of school districts to notify the Division of a change in employment status or to provide necessary documents can cause delays.

The audit report questions the Commission's ability to delegate closing cases. It dismisses the plain language of Education Code § 44220 which clearly provides that any power, duty, purpose, function, or jurisdiction that the Commission may lawfully delegate is delegated to the Executive Director. While the Commission agrees that it could not delegate the imposition of discipline to staff via the Executive Director, closing a case that does not meet legal requirements for the imposition of discipline is not barred. The underlying standards for investigation are clearly set out in Regulation 80302 which is based on the Morrison (Morrison v State Board of Education 1Cal3d214 (1969)). factors listed on page 14 in the report. Morrison is the seminal case that is looked to in both educator employment and licensing decisions. The Committee has utilized these factors to provide direction and delegation to staff that such cases should be closed. In addition there are statutory provisions and case law that govern closing cases, some of which are listed in the report. For example, the Committee is barred by law from reviewing juvenile records, infractions, successful drug diversions, arrests with no charges filed, school district misconduct if the Commission on Professional Competence has dismissed the case.

(17)

The contemporaneous administrative interpretation of a statute by an administrative agency is, of course, entitled to great weight and will not be departed from unless clearly erroneous (Select Base Materials v Board of Equalization, 51 Cal. 2d 640) Unless contrary to the plain language of the statute the agency should be considered to have correctly interpreted and implemented its statute. Legal counsel from the Division and BSA discussed this issue extensively. The BSA legal counsel did not present any statutory or case law to support the opinion that the Commission did not correctly interpret the statute. The Division legal counsel provided the BSA with a Superior Court ruling (Barrera v Commission on Teacher Credentialing, SF Superior Court CPF10510855) in which the Commission and the opposing party were asked to brief and respond to the question: “Does Education Code section 44242.5 allow discretion concerning which matters are referred to the Committee of Credentials?” In its order the court found that Education Code section 44242.5 cannot be read to impose a mandatory duty on (the Commission) to present plaintiff's allegations to the Committee. The Commission was represented in this action by the Office of the

Attorney General. The BSA legal counsel did not find the Superior Court decision relevant or controlling because it was not an appellate decision. We disagree.

We agree with the audit report's recommendation to implement a program to timely return unnecessary rap information to the Department of Justice (DOJ) and have already begun this process.

Since the new rap process in Feb 2010, The Division has been better equipped to track the number of RFRDOJs, and gained a clear understanding of the additional work load created by having to process these raps on individuals without credentials. Effective March 8, 2011, raps marked RFRDOJ are entered into a dated spreadsheet, and the package of raps, along with a copy of the list of names, and a brief cover letter is returned to DOJ every Monday. On March 8, 14 and 21, the Division returned packages to DOJ with about 209 raps.

## Response to Chapter 1

### *The Division has experienced Significant Workload Backlogs*

As stated previously the Division acknowledges the rap backlog. It bears repeating that the rap backlog consisted of low level criminal misconduct arrests that were reviewed and sorted while higher priority cases were processed. All of the raps associated with this backlog have been processed. Additionally, with the implementation of the electronic rap receipt new raps are now processed in one day so there is no longer any backlog of raps. The Division completed the processing phase by the end of 2010 and all raps are either pending a letter of inquiry or in the Committee review process.

### *Backlogs Have Been Associated with Delayed Processing of Reports of Educator Misconduct*

The rap backlog did not lead to delayed processing of all reports of Educator Misconduct, however there were delays in processing cases that were not part of the rap backlog. The lack of a case tracking system contributed to an inability to properly monitor the delays. We disagree, however that the averages in Figure 4 are meaningful or can accurately reflect the processing time because an average does not consider the severity of misconduct or external factors beyond the Division's control as well as required statutory timelines. (14) (18)

The finding on page 33 that in 11 of 29 cases sampled it took more than 80 days to open a case is reflective of the prior process. Of those cases one ended in a revocation, six were suspensions and the remainder grants, closes and public reprovals. The sample used did not include any rap sheets or applications received subsequent to the implementation of the new case tracking system and none of the cases listed were opened after implementation of the new system (19)

The cases cited on page 34 were an aberration as a result of a now identified problem with processing of electronic applications in which the system dropped names and applications. The dropped applications were identified and have been processed although the system error did cause a delay.

### *Time Lapses in Investigating Reported Misconduct Potentially Allowed Educators Who May Not be Fit to Remain in the Classroom*

It is important to note that the 30 cases cited in this section and then again in some cases in other sections were according to the audit report "judgmentally selected" therefore delays were found in every instance. The reason for the delays cited in the report are found on page 35. In the first three bullets an average time was cited with no distinction between types of cases. The third bullet also detailed the average time which passed before a teacher was sent a letter of inquiry. It is critical that the fact that once a case is at the Letter of Inquiry stage the cases are managed to conform to the statutory timeline for review afforded to applicants and credential holders pursuant to Education Code section 44244 impacts the scheduling of cases. If this caseload management is not done correctly the Committee could lose jurisdiction on a case before it is reviewed. The final bullet is the minimum length of time in which the Committee can conduct its review. (20)



②1 On page 35 the audit report cites a case where the Division did not promptly pursue all sources of information. In this case the credential holder, employed by a private school, was arrested in 2006. Although the credential holder resigned the employer was a private school and there was no duty to report the change in employment status. No arrest information was received by the CTC from either law enforcement or the employer until December 2007 when a rap was sent informing the Division that the person was convicted of a misdemeanor non-mandatory offense of contributing to the delinquency of a minor. Upon receipt of the rap sheet in December 2007 documents were gathered and the case was scheduled for review by the Committee. If the original arrest had generated a rap notification the credential could have been automatically suspended but that suspension is required to be lifted and the credential returned upon notification that the credential holder has been convicted and sentenced to a non-mandatory offense.

On page 36 the statement that the committee can review only 60 cases is correct in that this is the maximum number of cases that can be review at the formal review stage. The Committee also reviews up to 60 cases at the initial review stage.

②2 The case on the bottom of page 36 used in the report as an example of a delay involves an arrest for distribution of obscene matter. A credential holder was arrested and charged with a violation of Penal Code 311.2(D). A timely rap sheet was received showing the arrest however there was no notification from the employing school district. Because there was an ongoing criminal investigation only the arrest information without investigation materials were provided to the Division in response to the Division's request to the arresting agency. The response to follow-up requests for information indicated that the investigation was still being conducted and that charges had not been filed. Early on in the investigation, the credential holder resigned from the school district however the district failed to notify the Division. The lengthy investigation was due, in part, to the need by the police to conduct a forensic analysis. During all this time the investigative reports indicating the victim's name, and the circumstances surrounding the investigation were not disclosed to the Division. Once the Division determined that the District Attorney had declined to file charges, the reasons for which were not given, the Division began the process to initiate the investigation. In order to comply with the jurisdictional requirements of Education Code §44242.5 before the school district could be contacted a letter of inquiry was required to be sent to the credential holder. It was only at this point that the Division was informed by the school district that the credential holder had resigned and the case proceeded to Committee Review. The audit report suggests that the Division should have immediately initiated an investigation. However, this admonition does not take into consideration the practical realities of conducting such a dual investigation without adequate evidence and information. Initiating such an investigation prematurely could ultimately result in the credential holder retaining the credential, instead of, as here a recommendation that the credential should be revoked. It bears repeating that that the delay was in large part due to external factors beyond the control of the Division: a lengthy police investigation culminating in the decision by the District Attorney not to charge or prosecute the credential holder and a failure on the part of the school district to notify the Division when the credential holder resigned.

①4 The case that appears on page 38 is used as an example of a delay why the case tracking system was requested and implemented. This November 2007 case involving a kidnapping and rape arrest, and a conviction for criminal threats was not processed in a timely manner. Although the holder's credential expired and was not renewed in 2008, the delay exemplifies the need for case tracking system both as an aid to managers and to employees to ensure that work is completed in a timely matter.

The case detailed on page 39 involved, a prostitution conviction and two shoplifting convictions which all occurred during a one year period. There was a nine month delay in making the first document request. The only reason for the delay was the case would not be a priority at that point since it was one low level misdemeanor that did not occur at school. As additional rap sheets were received, police reports and conviction information was requested and received from three jurisdictions from November 2007 through 2008. The Committee reviewed the case in September 2009 and recommended a revocation. The Commission adopted the recommendation at its December 2009 meeting; reconsideration was requested and denied at the Commission's March 2010 meeting. The revocation became effective on April 10, 2010. The delay from May 8, 2009 to April 10, 2010 is directly attributable to required statutory time frames. The audit report is critical of the fact that the Respondent's credential was renewed while the investigation was ongoing. Pursuant to Education Code section 44251(3) all clear credentials are valid for the life of the credential holder provided an application and renewal fee is received every five years. Although the section also includes a proviso that it is subject to meeting all professional practices requirements because of due process concerns this proviso has been interpreted to mean only that the credential can be revoked following appropriate review. (23)

The case cited on page 40 involved the credential holder kissing a student. It began as a criminal case because the school district notified the Division of the kissing incident and that the police department was investigating. The delay noted in the audit report is correct that documents were not requested for sixteen months and then further delays occurred before the decision was made to treat the case as a non-criminal investigation. This delay is unacceptable and highlights the need for the now implemented case tracking system as well as personnel and assignment changes that were implemented in August 2009 which resulted in a dedicated staff person to handle school district report and requests for information. (14)

The case on page 41 involving a credential holder accused of making inappropriate sexual comments was opened on October 1, 2008 as a result of two "yes" answers on applications for a Certificate of Clearance and a Clear Single Subject Credential indicating respondent had been dismissed from employment but that the dismissal was in arbitration. The Division's files indicated that respondent had been previously reviewed and the previous file was ordered from the State records center. Obtaining that information, reviewing and combining the file resulted in a two month delay. Respondent's credential expired on July 1, 2008. There was another delay until April 28, 2009 when requests for additional information were sent to respondent and his charter school employer. From April, 2009 through July 1, 2010 multiple requests were sent to the school requesting further information. There were multiple delays because of the investigation/possible arbitration and there had not been a final employment action. The case was reviewed by the Committee and the recommendation was a 7-day suspension of his expired credential after which his applications would be granted. We emphasize again that the delay in this case was for the most part the result of the delay in the school taking a final employment action, an external factor. The credential holder in this case did not hold a document issued by the Commission since the applications were for a certificate of clearance and a preliminary teaching credentials although for a portion of time it appears that he had a county issued Temporary Teaching Certificate. The statement that appears in the footnote identifying a teaching certificate was a CLAD certificate that does not stand alone as a document allowing the holder to teach without an underlying document.

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In the case listed on page 41 involving a charge of exposing students to pornography on the internet the first notification was a rap sheet showing the case dismissed and charges dropped in October 2008. There was no school district notification when the arrest occurred in 2007. We agree with the audit report's conclusion that given the potentially serious nature of the charge, directly involving students the matter should have been put in the priority list. This case highlights the need for the now implemented case tracking system. We do note that the fact that the children could or could not be located as highlighted by the audit report did not result in the case being closed. The case was closed because the forensic investigation analysis of the computer did not sustain the student's claims.

***The Division does not always effectively track the status of cases with the Potential for Mandatory Adverse Action against a credential holder***

The summary states that there were six cases that involved possible mandatory revocation in which the commission's database did not contain a record of the current activities in the case. Although it is important to track all case activities in the commission's database, it should be noted that none of the six identified cases has, to date, resulted in convictions requiring mandatory revocation. Four of the cases are no longer potential mandatory revocations because the person either pled to a lesser offense or no charges were filed after the arrest. In one case the person is currently on drug diversion and in the other there is still no conviction.

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Beginning on page 43 of the report these same six cases were identified as cases in which the database did not reflect any activity on the case for an extended period of time. With regard to the first case, at the point in time when the rap was received, the potential mandatory charge had been dismissed and this person was convicted of a driving under the influence causing injury charge. Although the division seeks to bring all cases to review as quickly as possible, cases which are no longer mandatory revocation cases and which are not identified as posing a significant risk to children can only be handled at the speed that current staffing levels and the committee's ability to review cases allow. The timeframe under which this case is being reviewed is within the time authorized by law and necessitated by the available resources. With regard to the second case, no charges have been filed and committee action is unlikely due to lack of jurisdiction and lack of evidence of misconduct. Since at the time this file was opened, it only reflected an arrest, the failure of the office technician to seek additional information given the high volume of cases she is required to handle during a reduced work schedule due to furlough dates cannot be considered a serious omission given that the division is already doing more than is strictly required when it opened the case prior to notice of a conviction. With regard to the third case, which is still a potential mandatory, the criminal matter is ongoing and the commission lacks jurisdiction to proceed at this time. With regard to the fourth case, no charges have been filed and committee action is unlikely due to lack of jurisdiction and lack of evidence of misconduct. Here the analyst had made an additional request for court records which was not reflected in the database. While it would have been better if that activity had been input into the electronic database, the information was available in the file itself and the case was being activity monitored. With regard to the fifth case, the committee is moving forward under jurisdiction obtained by the person's dismissal from employment. Although the actions of the analyst were not reflected in the database, the division was attempting to obtain the information it needed to proceed with this case in the absence of a conviction. The six and final case is one in which the person is on drug diversion and therefore the commission has no jurisdiction. Although the activities database did not contain the information, the file

itself contained the court update showing that his person was still successfully on diversion. Although it is important to ensure that such information is imputed into the database, the more important task of obtaining the necessary information had been accomplished.

***The Division Often Delayed Seeking Information Needed to Review Reports of Educator Misconduct***

As previously discussed the use of averages for processing times does not address the priority given to cases and/or the external factors that affect the processing times. However, where such factors are not in evidence the findings regarding delays highlight the need for the case tracking system that has been implemented.

14

***The Division Does Not Always Investigate School Reports of Misconduct While Criminal Investigations are Unresolved***

As the supervising investigator explained to the BSA, School District reports fall into two categories. Reports sent pursuant to Education Code section 44940 are for the purpose of notifying the Division of a criminal charge (not an arrest) that could result in an automatic suspension of the credential. Sometimes school districts notify the Division of an arrest but the notice is not made pursuant to either section 44940 or section 44242.5 which is a notice that an employment action such as dismissal, nonreelection, suspension, placement on unpaid leave or resignation has taken place while allegations of misconduct are pending. If the credential holder is placed on paid leave even though correspondence has been sent from the school district, there is notice that gives jurisdiction to investigate. The issues surrounding whether or not a given report from a school district has given the Division jurisdiction to investigate is closely examined in each school district case and is frequently the source of procedural objections. A matter cannot be investigated until jurisdiction has been correctly established. As a result the Division is very cautious in its determinations regarding whether or not there is jurisdiction to pursue an investigation. In addition an investigation cannot commence prior the date a Letter of Inquiry (LOI) is sent and if an LOI letter is sent out the jurisdictional clock for Committee review starts to run. As a result documents were not requested immediately. Prior to August 31, 2009, technicians opened district cases along with criminal cases. District files had the same priority as criminal files at that time. Files were typically opened and forwarded to the Investigation unit as they were received. On occasion, an analyst would call a district or send letters to obtain additional documents, but it was an additional duty assigned to that analyst that was not done on a scheduled basis and not tracked. Because of the jurisdiction and commencing an investigation issues discussed above, investigators also did not request district documents until the Letter of Inquiry was sent to avoid being accused of "investigating" prior to LOI. In order to correct this deficiency, an analyst was assigned to the Investigation unit with handling school district notices as a primary assignment and marked improvement has already been seen.

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Even if a school district notifies the Division pursuant to section 80303 of the California Code of Regulations of a change in employment status, when the only underlying misconduct is a pending criminal matter, and the Division technically has jurisdiction to open an investigation, the underlying misconduct isn't adjudicated at that point. Frequently in such cases, the district is relying on law enforcement to conduct the investigation so in most situations, the school district hasn't conducted an independent investigation.

②6 The most common scenario is that the individual resigns his or her position while allegations are pending so the school district has no need to pursue the matter. If CTC opens an investigation, it would have to also rely on law enforcement to provide the information to support the allegations of misconduct or attempt to conduct an independent parallel investigation. Law enforcement often doesn't cooperate with outside agencies when investigations are underway. If our investigators attempt to interview and gather evidence during this investigation and prior to prosecution, this can be viewed as interference by law enforcement. This could create conflicting witness statements, discovery issues, and problems for all concerned. Additionally, the credential holder has a constitutional right to remain silent while under criminal charges so it is highly unlikely that he or she would cooperate in the CTC investigation. CTC is not equipped or staffed to independently conduct statewide criminal investigations and adjudicate those cases. That is essentially what CTC would have to undertake in these situations. If there is a criminal conviction, that gives CTC an adjudicated matter to base discipline on if appropriate. If there is no conviction, CTC then has access to police reports and witnesses and can make a decision as to the appropriate course of action.

The example set forth on page 48 reflects the most common fact pattern. The case presented in the audit report was hampered by the length of the criminal investigation and the failure on the part of the school district to timely notify the Division when the credential holder resigned. Each case is reviewed on its merits and CTC occasionally will attempt to pursue a case prior to the criminal matter being resolved, if there is a reasonable probability of being successful. This is a judgment call that CTC attorneys and investigators make based on our experience in these matters.

②5 The most common scenario for pursuing a case based on a school district report where there is pending criminal conduct would be when the school district has independent evidence of the behavior and/or other non-criminal misconduct is part of the underlying charges. Then it may make sense to initiate the investigation prior to the adjudication of the criminal matter. Once CTC initiates an investigation, the case must go to formal review within six months. Jurisdiction isn't evidence and the worst possible situation is to present the Committee with allegations of misconduct, but no evidence upon which to make a reasoned judgment. This could lead to the Committee closing a case because it lacked the requisite evidence to make a probable cause determination that the misconduct had taken place. The closed case would preclude the Committee from taking action once the criminal matter had concluded and the information necessary to conduct a full investigation was made available. No doubt if this occurred the Division would be criticized for initiating its investigation prematurely without sufficient information. Each of these investigations is handled on a case-by-case basis using the information available at the time.

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*The Division has not always effectively processed rap sheets provided by the Department of Justice*

As the report states the Division of Professional Practices (Division) did experience a backlog in the processing of RAP sheets that grew to unacceptable levels. We are pleased that the report recognizes the Commission's efforts to eliminate this backlog and its successful efforts in doing so. In addition the report acknowledges that the Division has instituted new procedures, and better use of technology to prevent unnecessary delays, to identify workload problems and provide assistance in preventing future backlogs. We welcome the recommendations provided in the report to make the case tracking system more robust and provide improved data for future planning as well as accountability. Because the audit came shortly after the Division's transition to the implementation of a new case tracking system that implementation is still ongoing and we are confident that when fully implemented as well as with the addition of the recommendations in this report future delays will be eliminated. Most significantly as a result of the implementation of new RAP processing procedures in February, 2010 electronic RAPs are now entered into the system the same day they are received, sorted by priority and tracked. In addition, paper raps are now scanned and entered into the system as part of the electronic file. 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.

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Despite the workload issues noted in the report during the period under review, the report notes that it has no evidence that any case was time barred by the statute of limitations and at all times the Commission met its statutory timelines for review. In addition, at no time did a delay cause a case to be closed because of the statute of limitations. The report notes that during this same time period the Division closed 48% of its cases within 30 days and 67% in less than 90 days. Finally, and most importantly the Commission has never had a complaint or a report that a delay in processing has caused harm to a student.

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*Some Cases Are Difficult to Locate in the Commission's Database because of its Prior Practices*

Prior to the electronic receipt and processing of rap sheets that began in February 2010 the rap sheets were part of the paper based file system. Some applicant raps prior to that date were electronic and are in the system. In addition even after February 2010 some raps were still paper based. These raps are now scanned and added to the system.

*The Division Does not Notify Justice of Individuals for Whom it is no Longer needs RAP sheets, resulting in Unnecessary Work to Process Them*

We agree with the audit report's recommendation to implement a program to timely return unnecessary rap information to the Department of Justice (DOJ) and have already begun this process. The term RFRDOJs used in the report is the return of raps in which DPP is "No longer interested" (NLI). Until March 8, 2011, DPP had not officially, physically returned these raps to DOJ. We did not return these raps because Penal Code section 11105.2 states we must notify DOJ when the is applicant is revoked, when the applicant may no longer renew or reinstate. The paragraph on the rap sheet is summarized differently. That paragraph states when the applicant is no longer employed, licensed or certified we must return the rap with NLI written on it. The Division

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had discussed with DOJ a process to use technology to communicate the information, but the Commission's computer system did not hold all the necessary information.

Since the new rap process in Feb 2010, The Division has been better equipped to track the number of RFRDOJs, and gained a clear understanding of the additional work load created by having to process these raps on individuals without credentials. Effective March 8, 2011, raps marked RFRDOJ are entered into a dated spreadsheet, and the package of raps, along with a copy of the list of names, and a brief cover letter is returned to DOJ every Monday. On March 8, 14 and 21, the Division returned packages to DOJ with about 209 raps.

*The Division does not always immediately suspend or revoke credentials*

We are pleased that the audit report found that a majority of the cases reviewed were handled appropriately and in a "reasonable manner." The three cases that are listed on page 53 as examples of when the division either failed to promptly impose a mandatory revocation or failed to seek critical information regarding a potential mandatory revocation in a timely manner the first two were directly attributable to human error by non attorney staff, which was later identified by legal staff. With regard to the first case, which was a felony violation of Penal Code section 487i (defrauding a public housing authority), the conviction in question was not initially recognized as a potential mandatory revocation by staff. Penal Code section 487i, which was added to the Penal Code during the 2008 legislative session, effective January 1, 2009. As such it was not listed in the table used by staff to identify a possible mandatory. When the case was reviewed by the legal staff the conviction was identified as one requiring mandatory revocation. Once the conviction was identified as a mandatory revocation offense, the mandatory revocation was implemented. With regard to the second case, the offense in question, Penal Code section 370 (public nuisance), is not a mandatory revocation offense. The delay in imposing the mandatory revocation was not identified by a technician or an auditor because it was highly unusual. The matter was further delayed by the need to conduct a thoughtful analysis to determine whether the conditions imposed on the credential holder by the court, with the potential of the case being dismissed after one year if there was no further misconduct, were legally sufficient to warrant a mandatory revocation pursuant to 44423.6. Once that determination was made to the satisfaction of the commission's legal staff, the mandatory revocation was imposed. The audit faults the division for taking five months to obtain records that established with certainty that a conviction for contributing to the delinquency of a minor was in fact not a mandatory revocation offense. Contributing to the delinquency of a minor is only a mandatory revocation offense if an allegation of lewd or lascivious conduct is pled and proved. Based on the Division's past experience, this is rarely the case because in most instances a teacher will only plead to contributing to the delinquency of a minor if it does not include the additional lewd or lascivious allegation. So at the point in time that the division became aware of the conviction, it was apparent based on past experience that this conviction was not going to result in a mandatory revocation and consequently it was not regarded as a possible mandatory revocation case and was not given the additional attention mandatory revocation cases warrant but which cannot realistically be given to all cases.

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*The Division Experienced Some Delays in Requesting Additional Information Regarding Criminal Convictions*

The different time frames and treatment of the rap sheets reflects the fact that rap sheets are processed according to the severity of the misconduct alleged. It should be noted that applicants are responsible for providing documents relating to criminal misconduct and not the Division. The Division will assist applicants who demonstrate that they have been unsuccessful in obtaining the information. This is reflected in the long delay for some applicants noted on page 56 of the audit report.

*The Division Exercises Even More Discretion than is Detailed in the Guidelines when Closing Cases*

The audit report questions the Commission's ability to delegate closing cases. It dismisses the plain language of Education Code § 44220 which clearly provides that any power, duty, purpose, function, or jurisdiction that the Commission may lawfully delegate is delegated to the Executive Director. While the Commission agrees that it could not delegate the imposition of discipline to staff via the Executive Director, closing a case that does not meet legal requirements for the imposition of discipline is not barred. The underlying standards for investigation are clearly set out in Regulation 80302 which is based on the Morrison (Morrison v State Board of Education 1Cal3d214 (1969)). factors listed on page 14 in the report. Morrison is the seminal case that is looked to in both educator employment and licensing decisions. The Committee has utilized these factors to provide direction and delegation to staff that such cases should be closed. In addition there are statutory provisions and case law that govern closing cases, some of which are listed in the report. For example, the Committee is barred by law from reviewing juvenile records, infractions, successful drug diversions, arrests with no charges filed, school district misconduct if the Commission on Professional Competence has dismissed the case.

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The chart displayed on page 57 titled "Guidelines the Division Uses to Determine the Types of Misconduct that It Does Not Move Forward for Committee Review" does not accurately reflect the Division's actions. The Committee routinely reviews misdemeanor convictions, petty thefts, and spousal abuse cases yet the title used could lead to misunderstanding or confusion because it leads to the conclusion that the Committee does not review misdemeanors. According to the audit staff, they used information provided by the Division that listed factors that are considered in determining whether or not a case rises to the level of review by the Committee. While all of these factors are correct, the presence of a factor does not preclude review by the Committee.

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Of the cases noted on page 58 in the audit report questioning the Division's closing of cases, one case involved a dismissal by the Commission on Professional Competence of the employment charges with prejudice, one case involved a first time applicant with 2001 misdemeanor conviction for making an unreasonable noise and 1998 misdemeanor conviction for driving with a suspended license. The 2001 conviction had included a misdemeanor child endangerment charge which was dismissed in the interest of justice, two cases involved arrests only, one case involved a neighborhood dispute which resulted in a ten year old disturbing the peace conviction and one involved a misdemeanor conviction for vehicular manslaughter without gross negligence. The Committee has specifically directed staff that it considers such convictions accidents since the conviction includes the finding that there was no gross negligence.

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The contemporaneous administrative interpretation of a statute by an administrative agency is, of course, entitled to great weight and will not be departed from unless clearly erroneous (*Select Base Materials v Board of Equalization*, 51 Cal. 2d 640) Unless contrary to the plain language of the statute the agency should be considered to have correctly interpreted and implemented its statute. Legal counsel from the Division and BSA discussed this issue extensively. The BSA legal counsel did not present any statutory or case law to support the opinion that the Commission did not correctly interpret the statute. The Division legal counsel provided the BSA with a Superior Court ruling (*Barrera v Commission on Teacher Credentialing*, SF Superior Court CPF10510855) in which the Commission and the opposing party were asked to brief and respond to the question: "Does Education Code section 44242.5 allow discretion concerning which matters are referred to the Committee of Credentials?" In its order the court found that Education Code section 44242.5 cannot be read to impose a mandatory duty on (the Commission) to present plaintiff's allegations to the Committee. The Commission was represented in this action by the Office of the Attorney General. The BSA legal counsel did not find the Superior Court decision relevant or controlling because it was not an appellate decision. We disagree.

*The Division Approved Applications When Applicants failed to disclose convictions*

When an applicant fails to disclose complete and accurate information, or any information at all on pending application, a failure to disclose (FTD) is identified. An applicant's FTD is viewed as an aggravating circumstance when the underlying misconduct is review by the Committee of Credentials. The Division sends an FTD letter when any of the above criteria is met. If a FTD letter is sent, it is noted and attached in Siebel and the letter is kept in the file and should be noted on the NU. In most cases Respondents are sent a FTD letter even if the case is closed prior to Committee. However, in the following instances the Division does not send a FTD letter:

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- When an applicant has previously disclosed the information on other applications, and is aware that the Commission has previously reviewed the misconduct, the FTD is not sent because the FTD does not involve NEW misconduct.
- If the misconduct does not require us to disclose, i.e., infraction, no misconduct.
- Applicants admonished regarding their FTD when the Division requests additional information and/or an explanation.
- Respondent calls DPP and is verbally told they did not disclose.

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On page 60, BSA states "The division approved and granted credentials for 59 applicants without committee review despite the applicant's failure to disclose some type of misconduct". However, our review of the BSA provided spreadsheet entitled, "Fail to Disclose Convictions Section", shows the number should be no more than 20 because either the applicant disclosed or a letter was sent.

## Response to Chapter 2

The issues raised in Chapter 2 have already been addressed with the exception of the audit report finding that the newly implemented case tracking system “isn’t working”. As stated previously, the Division initiated many improvements in early 2010 including case tracking. The only case tracking refinement remaining is an exception report, to report on those items that the system does not report or aberrations. The Division did not prepare the exception report earlier because it needed experience with the system. The audit report mentions some of those items in their report. In addition, tracking cases does not mean cases will automatically be more processed faster since the process will continue to be subject to external factors beyond the Division’s control. The system was established to prioritize the work and prevent unnecessary delays by providing more visibility to management and clarity in delineating potential mandatory and discretionary cases.

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The report could lead the reader to incorrectly believe the case tracking system does not work. Specifically, in the first paragraph of page 46, the report states that for 12 of 14 cases closed after February 1, 2010, an average of 319 days elapsed before DPP requested additional information. This statement is misleading at best. According to the BSA-provided spreadsheet entitled, “Backlogs have been associated with delayed processing of reports of educator misconduct”, all the dates in the “First action supported by paper files (i.e.: records request)” were all dated before February 1, 2010. The case tracking system was not implemented then. In fact, of those cases, the investigation phase was initiated prior to case tracking even being implemented. An appropriate sample would have been cases opened after March 2010 or later.

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### Response to Chapter 3

The BSA was charged with determining if the Commission's current policies and practices were impacted with hiring family members. In addition, the BSA was charged with surveying staff to determine if familial relationships, nepotism and employee favoritism, and their impact on the Commission's hiring practices and the staff's ability to work without fear of reprisal for filing a complaint.

- ③⑥ The Commission is pleased to find that the BSA audit did not find any evidence in its review of nepotism, or employee favoritism impacting the hiring practices. Based on the BSA survey on page 107 and 108, the majority of the Commission employees [136 employees (72% of those surveyed)] that took the survey were
- ③⑦ aware of the Equal Employment Opportunity Policy (79%) and the process to file a grievance (67%) that are available either in the Commission's intranet or outlined in the specific bargaining unit contract, respectively. Finally, according to the survey, 92% of staff do not believe familial relationships adversely impacting their ability to work professionally.

## Comments

### CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE COMMISSION ON TEACHER CREDENTIALING

To provide clarity and perspective, we are commenting on the response to our audit report from the Commission on Teacher Credentialing (commission). The numbers below correspond to the numbers we placed in the margin of the commission's response.

The commission is incorrect in asserting that it did not miss any deadlines established in the Education Code. On page 62 we report that the Division of Professional Practices (division) does not currently include in its reports information necessary to ensure it does not lose jurisdiction due to time-based statutes and the commission did, in fact, lose jurisdiction over one case we reviewed because the statutory time limit had elapsed.

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Our findings of inaccurate and incomplete information in the database resulted from our tests of activities the division conducted up to the end of 2010, well after the time the division asserted it began reengineering its process including its new case tracking system. In addition, the commission incorrectly portrays our findings when it says our review of its paper files did not find errors. On pages 34 and 35 we discuss instances where the division had not included evidence of investigative activities in the paper files or could not locate a paper file for our review.

②

The commission incorrectly characterizes our discussion of its workload backlog. We merely present management's assertions regarding the division's identification and disposition of the backlog. Nonetheless, on page 24 we state management asserted it began to process the backlog in August 2009. Moreover, the commission's statement that there has been no backlog since June 2010 conflicts with statements made to us by division management. In January 2011, the manager told us that the "RAP project" to eliminate the backlog was still in process. On page 25 we present his assertion that the division has not tracked the cases from the backlog separately from the division's normal workflow. Thus, we do not understand how the division can conclude it currently has no workload backlog.

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We anticipate that when the commission provides us with its 60-day, six-month, and one-year updates on the implementation status of our recommendations that it will describe how it is addressing all aspects of each recommendation.

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- ⑤ As we point out on pages 54 to 56, the database the division uses to manage its workload does not always provide accurate or complete information.
- ⑥ We see no reason why the commission cannot inform employees periodically of the existence of a grievance process.
- ⑦ The commission misrepresents our statements regarding its workload backlog. We make no conclusions regarding the extent or success of the division's efforts to eliminate the backlog. On pages 22 through 25, we merely present managements' assertions regarding the status of the workload.
- ⑧ The commission appears to base its statement regarding the time elapsed between opening and closing cases on Table A.2 in Appendix A. However, the information in the tables in Appendix A is based on data we determined was not sufficiently reliable, as we describe in the Scope and Methodology section of the report. Nonetheless, we included the information in Appendix A because it was based on the only data available to answer certain audit objectives. In addition, Table A.2 includes time lines between the opening and closing of cases. Because for some cases significant amounts of time have elapsed between the division's receipt of reports of misconduct and the opening of a case, the information in Table A.2 is not necessarily an accurate representation of the time the division takes to process the reports and investigate cases. In fact, Figure 4 on page 26 shows that for a random sample of 29 cases the division took an average of 128 days to open a case after receiving reports of misconduct.
- ⑨ These cases are troublesome even when reviewed in context. We reviewed them in accordance with the laws and rules that govern the discipline process and in consultation with the manager and supervising investigator who are responsible for the processing of the cases.
- ⑩ According to the law, the Committee of Credentials (committee) gains jurisdiction to perform an initial investigation and formal review through six different types of reports of misconduct, which we describe in the text box on page 12, only one of which is related to a reported arrest or conviction of a crime. Further, except in instances where the law requires the commission to take mandatory action on a credential, the threshold for discipline is a determination of the fitness of the educator to perform the duties authorized by the credential, not their guilt in the commission of a crime.

As we discuss on pages 33 and 34, during a period well beyond February 2010, the division did not adequately track 6 of 29 cases that potentially required mandatory action to ensure such actions are prompt.

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The commission discounts the potential impact of the conditions we report in this finding in the manner in which it presents the ultimate outcome of these six cases. Our point is that if the division does not carefully track the status of these potential mandatory cases, individuals may keep their credentials longer than the law allows. We agree that these types of cases present challenges for the division to identify when it must take mandatory action and what the appropriate final action should be. However, if the division does not ensure its staff adequately track these cases it cannot be certain that it will promptly take the appropriate actions to identify risks to children that result from the presence in the classroom of credential holders who are unfit for their duties.

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The commission's statement that the important factor to consider is that statutory deadlines were met ignores the primary purpose of the committee—to use its discretion to review reported misconduct and recommend disciplinary action.

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The commission's statement is confusing, if not erroneous. The division told us during our fieldwork that its implementation of a case tracking system that uses information from the commission's database is one of its critical actions to effectively monitor its workload and prevent further workload backlogs. Moreover, in December 2010 the division reported to the commission that it had finalized the implementation of its case tracking system. However, here the commission states its case tracking system is primarily paper based and will be for several years to come. Finally, the case tracking reports the division shared with us and stated it used to monitor its caseload are developed from the database. Therefore, the division's statements are not clear as to how its case tracking system offers any improvement in its ability to monitor its workload any more effectively than it has in the past.

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While preparing our draft report for publication, there were slight text changes and page numbers shifted. Therefore, the page numbers that the commission cites in its response do not necessarily correspond to the page numbers in our final report.

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The commission misses our point. Disciplinary action can occur through two mechanisms: through mandatory disciplinary action taken by the division when credential holders are convicted of certain crimes, and through discretionary decisions made by the committee and the commission. When the division only acts after awaiting the outcome of criminal proceedings and the proceedings

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do not result in a conviction, enough time can elapse so as to reduce the division's ability to conduct a successful investigation under one of the other sources of jurisdiction available under the law. When this occurs, the division deprives the committee of its primary duty—to review reported misconduct and recommend discipline when appropriate.

- ⑰ We performed a thorough legal analysis of the improper delegation issue, which included reviewing well-established principles of statutory construction, numerous appellate court and California Supreme Court decisions, several Attorney General opinions, and all of the evidence the commission provided to us relating to the guidance provided to staff to assist them in closing cases without committee review, including the informal guidelines, prior meeting agendas and minutes, reports provided to the commission, applicable regulations, and attestations from the division manager and assistant general counsel. Applying all of the evidence provided to the controlling case law and applicable opinions from the Attorney General, we concluded that the committee is unlawfully delegating its discretion. Accordingly, we recommend that the commission retain independent legal counsel to perform a complete legal analysis of this issue, something that the commission's assistant general counsel admitted to us he has never done, and take all steps necessary to ensure that its practices and procedures comply with that advice.

As the commission explained in its response, unless clearly erroneous, an agency's interpretation of a statute is entitled to great weight. We believe, however, that the commission is clearly erroneous in its interpretation of the statutes applicable to the delegation issue, and we repeatedly attempted to explain our position to the commission's legal counsel. Specifically, the plain language of the Education Code delegates to the Executive Director any power, duty, purpose, function or jurisdiction that the commission "may lawfully delegate" and requires that "[e]ach 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]." Additionally, numerous statutes and regulations expressly require the committee to act, though in some instances not applicable here, they require staff to act. Recognizing that the Legislature is presumed to know the law and harmonizing the provisions of the Education Code as we are required to do, we think the limits of the delegation contained in the Education Code are those established by the California Supreme Court: "when the Legislature has made clear its intent that one public body or official is to exercise a specified discretionary power, the power is in the nature of a public trust and may not be exercised by others in the absence of statutory authorization"

(see *Bagley v. City of Manhattan Beach* (1976) 18 Cal.3d 22, 24-25). Although the Legislature did delegate to the Executive Director, it only delegated that which may lawfully be delegated. California courts have repeatedly held that although administrative or ministerial functions can be delegated, discretionary powers cannot (*Sacramento Chamber of Commerce v. Stephens* (1931) 212 Cal. 607, 610; *California School Employees Association v. Personnel Commission of Pajaro Valley* (1970) 3 Cal.3d 139, 144; *American Federation of Teachers v. Board of Education* (1980) 107 Cal.App.3d 829, 834; *Hicks v. Board of Supervisors* (1977) 69 Cal.App.3d 228, 235). Moreover, the California Supreme Court has held that when the Legislature assigns to a body a specific duty, the body has no authority to enact rules or regulations that alter or enlarge the terms of the legislative enactment (*California School Employees Association v. Personnel Commission of the Pajaro Valley Unified School District of Santa Cruz County*, *supra*, 3 Cal.3d 139, 144).

In analyzing the authority of a board to delegate, the Attorney General has written:

As noted above, the Legislature has in many instances specifically provided for a broad delegation of powers from a board or commission to its executive officer. These statutes may also establish a presumption that any authority held by a board that may lawfully be delegated has been delegated to its executive officer.

The extent to which a public agency's authority may lawfully be delegated to an executive officer depends not only upon the agency's enabling statute, but also upon whether and to what degree the agency has first provided clear guidelines within which subordinates may apply, administer, or enforce the authority granted. That is to say, if a board or commission has exercised its judgment in defining standards and establishing protocols for the treatment of a matter within its jurisdiction, it may then delegate the application or enforcement of those defined standards in specified situations.

Examples of permissible delegations include most personnel decisions, supervision of the agency's staff, and general day-to-day administration of the agency's operations. In contrast, matters that call for an exercise of the board's or commission's special discretion or judgment may not lawfully be delegated to an executive officer or other body because such authority is exclusively reserved, as a public trust, for the public agency to which that authority has been conferred by law. If this were not so, the board or commission would itself have little purpose (90 Ops. Cal. Atty. Gen 89 (Opinion number 07-103)).



Applying the rationale of the Attorney General, where the committee has exercised its judgment to define standards and establish protocols for the treatment of a matter within the committee's jurisdiction, it may then delegate the application of those defined standards in specified situations. Because we were provided no evidence that a quorum of the committee had acted to define standards for staff that do not require staff to exercise their substituted judgment on behalf of the committee,<sup>5</sup> we believe the committee is exceeding the lawful limits of the delegation made by the Legislature and improperly delegating its discretionary authority.

Additionally, we considered the *Barrera* decision that the commission cites in its response in reaching our conclusion. However, because the *Barrera* decision involved specific facts presented to the trial court on a writ petition, contained absolutely no legal analysis or discussion,<sup>6</sup> and is applicable only to the parties or to situations identical to that presented by the parties, we find it neither controlling nor persuasive justification for the committee's noncompliance with the plain language of the Education Code. Finally, we find the committee's reliance on a 2010 trial court decision as the sole judicial rationale justifying staff closures of cases in 2007, 2008, and 2009 both curious and misplaced. For all of the foregoing reasons, we stand by our legal analysis and conclusion that, in the absence of explicit guidelines provided by a quorum of the committee, 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.

- ⑮ The commission's statement that it disagrees that the average times to process critical steps presented in Figure 4 on page 26 are meaningful or can accurately reflect the processing time is puzzling. As we discuss on page 50, the division has not collected the workload data necessary to determine how long it should take to process a case. Thus, it cannot know whether the average times shown in Figure 4 are meaningful.

<sup>5</sup> The assistant general counsel admitted that many of the *Morrison* factors contained in 2 C.C.R. 80302 are "subjective." We agree that applying them requires the exercise of discretion and we believe that discretion is statutorily vested in the committee.

<sup>6</sup> The sum total of the court's written discussion of the issue was "the court finds that Section 44242.5 cannot be read to impose a mandatory duty on the respondent to present plaintiff's allegations to the committee." This holding is distinct from one excusing staff from the duty to present to the committee each allegation that may subject a holder or applicant to adverse action, as the plain language of the law requires. Although we could not obtain and commission staff never provided any pleadings containing the underlying facts in the case, from what we could glean from our research, the plaintiff in *Barrera* appears to have alleged misconduct that did not give the committee initial jurisdiction to act. We agree that, where the committee clearly does not have jurisdiction, the allegation should not be presented to the committee and staff may close the case.

As we state on page 25, the random sample of reports of misconduct we used to develop this finding consisted of those closed by the division or reviewed by the committee between July 2009 and October 2010. The purpose of our testing was to determine the amount of time that elapsed between key steps in the division's process from the opening of a case to the closing of a case, thus our sample focused on closed cases. As we point out on pages 25 and 26, the division took significant amounts of time to accomplish certain critical steps, including averaging 683 days to close cases. This may explain why our sample did not contain any cases that the division opened and closed during the seven-month period between February 2010 and October 2010.

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The commission incorrectly portrays our methodology for selecting the cases we reviewed. The 30 cases the commission refers to we selected from a population of 87 cases that came to our attention during the audit because of long processing times and allegations of serious crimes, as we state on page 27 of the report. For the other tests we performed, we used samples of reported misconduct randomly selected from populations of reports that we extracted from the commission's database based on attributes from the audit objectives approved by the Joint Legislative Audit Committee.

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We could not locate this case on the page cited by the commission in the draft version of our report; however, we believe the circumstances the commission discusses are similar to a case we discuss on page 40. If so, see our comments under note 30.

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The commission distorts the facts of its investigation by omitting the timeline regarding these events. As we state on page 28, the division first learned of the misconduct in May 2008. In August 2008 it received a police report that, contrary to the commission's response, identified the victim's name. In February 2009 the division learned that the district attorney had declined to press charges against the credential holder. However, the division did not request additional information for its investigation until March 2010. Ultimately, in July 2010 the committee recommended revoking the holder's credential based, not on a conviction, but on the results of the division's investigation.

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Had the division promptly investigated the initial conviction for prostitution and taken action at that time, the remaining facts, including whether to renew the holder's credential, would be moot. Further, the division does not identify the criteria it used to determine a prostitution conviction is not a priority and we have no evidence that a quorum of the committee agrees with this determination.

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- ②④ The commission misses our point. Our finding relates to a lack of activity on cases that, based on information contained in the RAP sheets, included alleged criminal activity that the division characterized as potentially resulting in mandatory revocation of a credential. If the division does not adequately track the progression of these cases, it cannot take prompt mandatory action when required. In its response the commission merely presents an update on the status of these cases.
- ②⑤ The law allows the committee six months from the start of the initial review to complete its formal review. Moreover, the law also allows the chair of the commission to extend the six month period when the committee demonstrates that additional time is necessary to complete the investigation.
- ②⑥ While it may be true that law enforcement agencies do not want the committee to perform its own investigation, we were given no evidence that a quorum of the committee voted as a policy matter to refrain from exercising its statutory jurisdiction until the conclusion of an investigation by local law enforcement entities. Moreover, neither the division's policy manual nor informal guidelines reflect a decision by the committee or anyone else to require the division to refrain from investigating cases when they are under investigation by a local law enforcement agency. According to the Education Code, the committee has jurisdiction to commence an initial review upon receipt of documents such as official records of the Department of Justice, of a law enforcement agency, of a state or federal court, or of any other agency of this state or another state.
- ②⑦ As we discuss on page 32, by not promptly initiating an investigation, the division risks losing the ability to conduct an effective investigation because witnesses and victims move or their memories of the facts surrounding the incidents fade.
- ②⑧ The commission is mistaken. We do not use the term "RFRDOJ" in the report. Instead, as we indicate on page 38, we identify these as RAP sheets that the division no longer needs.
- ②⑨ The commission's statement reinforces the need for our recommendation on page 63 that the division would benefit from comprehensive written procedures to promote consistency in, and conformity with, management's policies and directions for reviews of reported misconduct.
- ③⑩ Again the commission misses our point. As we state on page 40 of the report, this credential holder was convicted of a violation of a section of law that requires mandatory revocation of his or her credential if lewd or lascivious conduct was involved. Our point

is that the division took five months after its receipt of the RAP sheet reporting the conviction to open a case and five additional months to request the court documents to learn if such conduct occurred. In fact, this case ultimately resulted in an agreement between the credential holder and the commission that required the holder to surrender his credential and agree to not apply for another California credential or seek reinstatement of the surrendered credential.

We agree the language is confusing. Nonetheless, it is the language the division provides to staff to make such determinations.

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We repeatedly asked division management for any evidence of the committee's delegation but were told the delegation was informal, as we discuss on page 51.

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We believe the commission's statement that the division would be aware of previously disclosed misconduct that was previously reviewed by the commission may be somewhat optimistic, based on the fact it uses a paper-based case tracking system receiving the volume of reported misconduct the division receives each year. In addition, because the commission did not provide any information on how it reached its conclusion that the number of applicants who did not disclose or to whom the division did not send a letter should be no more than 20, we cannot evaluate the validity of its claim. We present our conclusions on pages 45 and 46.

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The commission appears to be quoting us with its statement that we found that the newly-implemented case tracking system "isn't working." However, we make no such statement. Nonetheless, we do state on page 54 that the database the division uses to track the cases it reviews does not always provide accurate and complete information.

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The commission incorrectly describes our sample. For 2 of the 14 cases we reviewed that were closed after February 1, 2010, the date of the division's first action was March 10, 2010, and June 16, 2010, respectively. Moreover, the commission states that cases opened after March 2010 or later would be an appropriate sample. Three of the cases we reviewed were opened March 4, 2010, June 3, 2010, and June 16, 2010. Finally, we disagree that the date the division opened the cases is the best criteria for selecting sample cases to evaluate the division's timelines for processing reported misconduct. For the three cases we reviewed that the division opened during March 2010 or later, it took 177, 62, 1029 days, respectively, to open the cases after receiving the reports of misconduct.

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- ③⑥ We were unable to conclusively determine whether nepotism or employee favoritism affected the commission's hiring practices, because, as we point out on page 69, the office of human resources does not always maintain proper documentation to support its hiring decisions.
- ③⑦ Although it is true that, as the commission points out, 79 percent and 67 percent of the employees responding to the survey indicated they were aware of the Equal Employment Opportunity (EEO) policy and the grievance process, we believe that the desired level of awareness about these policies for any state organization should be 100 percent, which the commission has not yet achieved.

cc: Members of the Legislature  
Office of the Lieutenant Governor  
Milton Marks Commission on California State  
Government Organization and Economy  
Department of Finance  
Attorney General  
State Controller  
State Treasurer  
Legislative Analyst  
Senate Office of Research  
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