



LAW UPDATE

LABOR AND EMPLOYMENT

PHONE: (661) 636-4830 • FAX: (661) 636-4843
E-mail: sls@kern.org • www.schoolslegalservice.org

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CHANGES TO REPORTING REQUIREMENTS TO CCTC REGARDING TEACHER MISCONDUCT (EFFECTIVE JULY 1, 2014)

You may recall during last year's August Workshop, Schools Legal Service previewed several changes that had been proposed to California Code of Regulations, title 5, section 80303, governing a school district's responsibility to report alleged teacher misconduct and changes in employment status to the California Commission on Teacher Credentialing (CCTC). Those changes went into effect July 1, 2014. Accordingly, a summary of that regulation and the new changes, requirements and reporting responsibilities are as follows:

A. WHOM TO REPORT. *Which credentialed employees must be reported to CCTC?* Section 80303 requires school districts to report to CCTC whenever a change in employment status occurs with a credentialed employee who is working in a position requiring a credential.¹ The reporting requirement applies to credentialed teachers, as well as substitutes, temporary teachers, probationary teachers, certificated administrators, and other certificated employees including, but not limited to, nurses, counselors and school psychologists.

B. WHAT TO REPORT. *What are the changes in employment status that districts are required to report?* Whenever a certificated individual is dismissed or non-re-elected, resigns from employment, is suspended or is placed on an unpaid leave for more than 10 days, retires, or is otherwise terminated or not reemployed as a result of an allegation of misconduct or while an allegation of misconduct is pending.²

¹ 5 CCR § 80303(a)

² 5 CCR § 80303(a)(1)-(5)

What conduct must be reported to CCTC? A change in employment status as a result of alleged pending or actual misconduct must be reported.³ Amended Section 80303 requires superintendents to provide CCTC with “all known information about each alleged act of misconduct” and to also include the name, current address of the credential holder, the employee’s last assignment title, an explanation of the allegation of misconduct, the current contact information for all persons who may have information regarding the alleged misconduct, and any and all documentation related to the matter.⁴

What not to report? The newly amended section also clarifies that a termination, non-re-election or decision not to reemploy that is based *solely* upon unsatisfactory performance, or layoffs does not require a report to CCTC.⁵ However, if any allegation of misconduct is involved in a teacher’s failure to be reemployed, it must be reported.

C. WHEN TO REPORT. Section 80303 requires the superintendent of the employing district to report the teacher’s change in employment status related to misconduct within, and not later than, 30 days after the final employment action.⁶ Meaning, if a teacher resigns while an allegation of misconduct is pending, the employing district’s superintendent must report the teacher’s resignation to CCTC within 30 days of the effective date of the teacher’s resignation. However, there is no penalty for immediately reporting or for reporting an upcoming change in employment status prior to its effective date.

In addition to employment status changes, districts are also required to report criminal charges. Although not covered under Section 80303, it bears noting that districts are required to directly and timely report to CCTC when criminal charges are filed against certificated employees. If a certificated individual is charged with a sex or drug offense pursuant to Education Code section 44940(d), the superintendent must report this to CCTC within 10 days of the credential holder being charged. Districts should not assume that CCTC receives the same Department of Justice informational reports regarding teacher arrests that districts receive, and should be mindful to ensure that if a district receives information that a teacher is charged with a reportable offense, the district must timely report to CCTC. The CCTC mandatory leave of absence reporting form is available at CCTC’s website. If you have any questions about whether or not a particular charge constitutes a mandatory leave of absence offense that must be reported to CCTC, please contact Schools Legal Service immediately.

D. NOTICE REQUIREMENTS. The superintendent is legally required to inform a credential holder, in writing, of the content of Section 80303 whenever the reporting requirements under that section are triggered. A superintendent’s failure to inform the credential holder of the content of Section 80303 constitutes unprofessional conduct by the superintendent which will be

³ 5 CCR § 80303(a)

⁴ 5 CCR § 80303(b)

⁵ 5 CCR § 80303(a)(6)

⁶ 5 CCR § 80303(a)

investigated by the Committee of Credentials.⁷ A brief letter from the district's superintendent, along with a copy of the regulation, should be sufficient to satisfy this requirement. Please contact Schools Legal Service for an appropriate template letter and a copy of the regulation.

E. PENALTIES FOR FAILURE TO REPORT. Failure to report subjects the superintendent to a criminal misdemeanor charge and investigation for unprofessional conduct by CCTC. As of January 1, 2014, Education Code section 44035.5(d) makes it a misdemeanor to willfully neglect to, or refuse to, make the required reports of changes in teacher employment status based upon allegations of misconduct to CCTC. This misdemeanor is punishable by a fine ranging from \$500 to \$1,000 which must be paid from the personal finances of the district's superintendent, and may not be paid with district or public funds.

Further, CCTC has jurisdiction to investigate a superintendent's failure to report.⁸ If CCTC finds that a superintendent failed to report, his or her misconduct will be reported to, and investigated by, the Committee of Credentials for unprofessional conduct which may subject the superintendent's credential to adverse action by CCTC.

Moreover, Districts may not craft deals or make agreements, pursuant to settlement agreements or otherwise, to avoid reporting a credential holder's alleged misconduct to CCTC. All changes in employment status of a credential holder as a result of alleged misconduct must be reported.⁹ In fact, any agreement not to report a teacher's change in employment status after alleged misconduct is void and unenforceable, even if the allegations against the credential holder are withdrawn.¹⁰ (See also *Picton v. Anderson Union High School District* (1996) 50 Cal.App.4th 726.)

Superintendents are strongly encouraged to share this information with all site administrators and personnel administrators because a district's failure to report will be deemed the responsibility of the superintendent and will subject the superintendent's credential to investigation and adverse action by CCTC.

More information regarding reporting to CCTC can be found on its website www.cte.ca.gov, along with the forms to be used when making a required report. Although CCTC's 80303 form and its copy of the regulation have not yet been updated to reflect the changes, the additional information is nonetheless required by law. Schools Legal Service recommends that you continue to use the 80303 reporting form found on CCTC's website, but include the newly amended version of Section 80303 when notifying employees of reporting requirements. The amended version of Section 80303 is available on the Schools Legal Service

⁷ 5 CCR § 80303(e)

⁸ 5 CCR § 80303(d)(h)(i)

⁹ 5 CCR § 80303(c)

¹⁰ *Ibid*

website, along with the template employee notice letter. Schools Legal Service has included a new section on its web page regarding reporting educator misconduct for your convenience, which includes additional resources.

Should you have any questions or concerns regarding reporting a teacher's change in employment status as a result of allegations of misconduct, or what information to include in a report, please do not hesitate to contact Schools Legal Service.

– *Tenielle E. Cooper*

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