

CALIFORNIA STATE AUDITOR

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Commission on Teacher Credentialing

Despite Delays in Discipline of Teacher Misconduct, the Division of Professional Practices Has Not Developed an Adequate Strategy or Implemented Processes That Will Safeguard Against Future Backlogs
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Statement by
ELAINE M. HOWLE, CPA
California State Auditor



Independent NONPARTISAN
TRANSPARENT Accountability





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Elaine M. Howle, State Auditor

BUREAU OF STATE AUDITS

INTRODUCTION

Senator Steinberg requested this audit because of concerns that the function and operation of the Commission on Teacher Credentialing (commission) had resulted in a significant backlog of allegations of teacher misconduct. Senator Steinberg was concerned that the backlog and delays in processing these allegations were hampering investigations and allowing unfit teachers to remain in the classroom. Additionally, Senator Steinberg was concerned that the full commission might not be aware of the backlog of misconduct allegations.

The Joint Legislative Audit Committee (audit committee) approved the audit request and directed the Bureau of State Audits (bureau) to audit the commission's disciplinary process from 2007 to 2010, with particular focus on the commission's internal policies and practices, the sufficiency of its database for recording and tracking allegations of misconduct, an assessment of the number and types of reports of misconduct the commission receives, and a determination regarding whether a backlog of complaints existed. If the bureau determined that a backlog existed, the audit committee directed us to determine the causes of the backlog and efforts the commission had undertaken to address the backlog. We were also directed to examine the amount of time that elapsed during various stages of the complaint and discipline process, to determine whether any complaints of misconduct were time-barred, and to gather various other statistics relating to the teacher credential discipline process as implemented by the commission. Finally, the audit committee directed us to examine the commission's hiring practices as they relate to the hiring of family members, and to survey commission staff regarding employee familial relationships, nepotism and employee favoritism, as well as staff's ability to work without fear of reprisal for filing a workplace complaint.

As discussed on the following pages, we commenced this audit with the understanding that two fundamental interests were at stake in any complaint of teacher misconduct: balancing the safety of California's school children with teachers' due process rights.

BACKGROUND ON THE COMMISSION ON TEACHER CREDENTIALING

The Commission on Teacher Credentialing (commission) was created in 1970 with the responsibility of ensuring excellence in education by establishing high standards for the preparation and licensing of public school educators. 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 appoints the members of an advisory committee, known as the Committee on Credentials (committee), which, among other things, reviews allegations of misconduct and makes recommendations to the commission regarding probable cause and the appropriate disciplinary action to take against a credential holder. The focus of our audit was on the role that the commission plays in taking appropriate adverse action regarding teaching credentials.

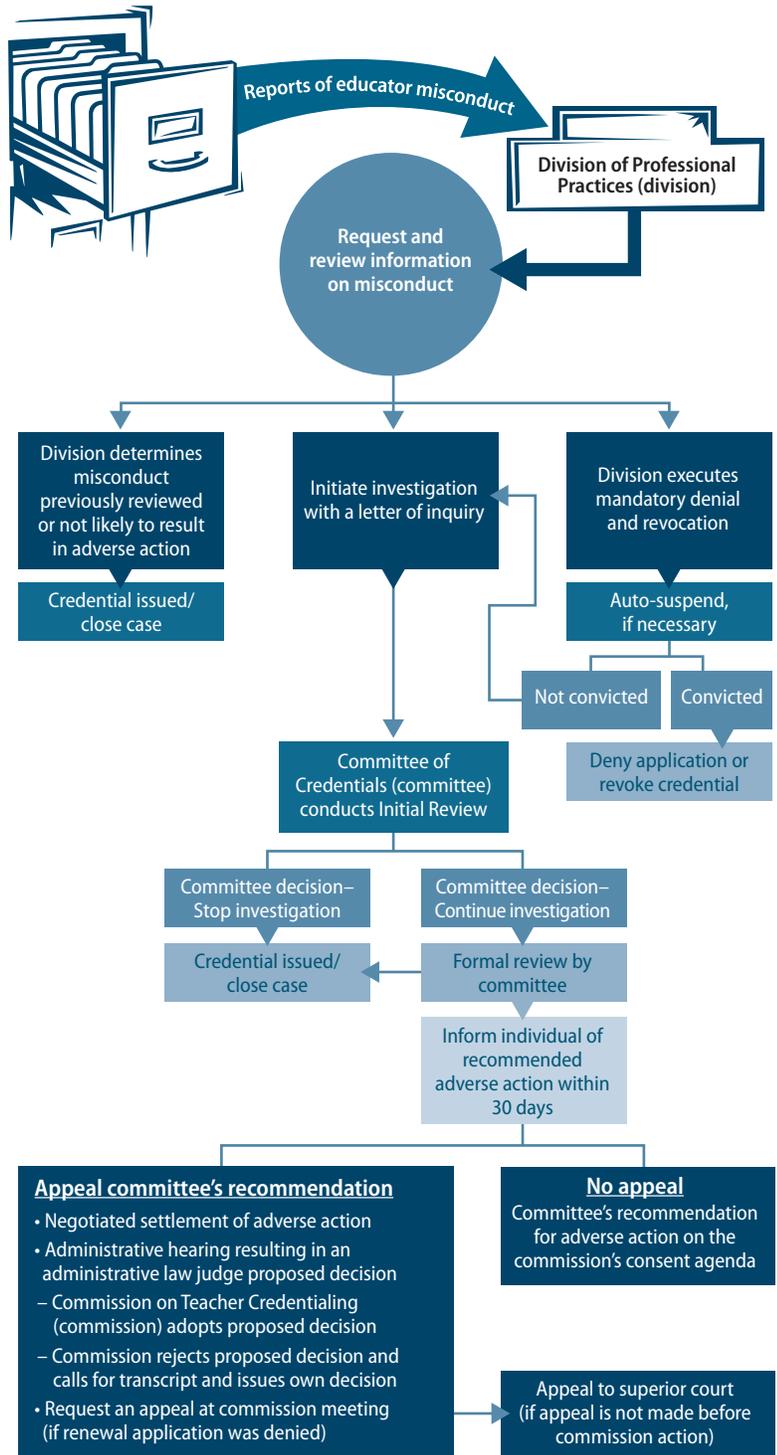
By law, the process used to take action against a licensed credential holder or an applicant for a credential is designed to balance two very important interests. On one hand, it is designed to ensure that schoolchildren are protected by taking appropriate action regarding the license of an unfit teacher. On the other hand, the process is designed to protect the constitutional property interests of credentialed teachers. This means that a teacher may not have his or her teaching credential suspended or revoked without a constitutionally adequate process, which typically involves notice and a right to be heard on the matter before action is taken. As we performed our audit work, these competing interests were very much in the forefront of our minds.

The law calls for a process that begins when the Division of Professional Practices (division), within the commission, receives information that alleges misconduct. The source of this information varies: it may come from a school employer, directly from a teacher who is self-reporting, from a law enforcement agency, or from a member of the public. 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.

Some allegations are considered so serious, namely those showing evidence of a conviction for certain serious or violent crimes, that the teaching credential must be immediately suspended or revoked without a hearing. These are known as "mandatories" by the division. All other allegations of misconduct, known as "discretionaries" must be presented to the committee so that the committee can determine whether adverse action is appropriate. The committee reviews the allegations and determines whether probable cause exists to take adverse action against a credential. If the committee determines that there is no probable cause then the inquiry stops there. If the committee finds probable cause, then it reports its findings and recommendations for appropriate action to the commission. Adverse actions range from a private admonishment to suspension, revocation, or denial of a credential. The commission may adopt the committee's recommendations without further action unless the applicant or the credential holder appeals.

In addition to taking action against the credential of a licensed teacher, the committee also determines whether an applicant should receive a teaching credential. Generally, an applicant 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 applicant 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.

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



Source: Division of Professional Practices.

We expected to find that the division uses management practices that enable it to efficiently and effectively process the information it receives and to 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 the commission 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. These were our expectations based on the legal framework and on generally accepted best practices for managing a licensing revocation process.

AUDIT RESULTS

The Division of Professional Practices' Procedures for Investigating Reported Misconduct Have Resulted In Workload Backlogs and Delayed or Questionable Processing

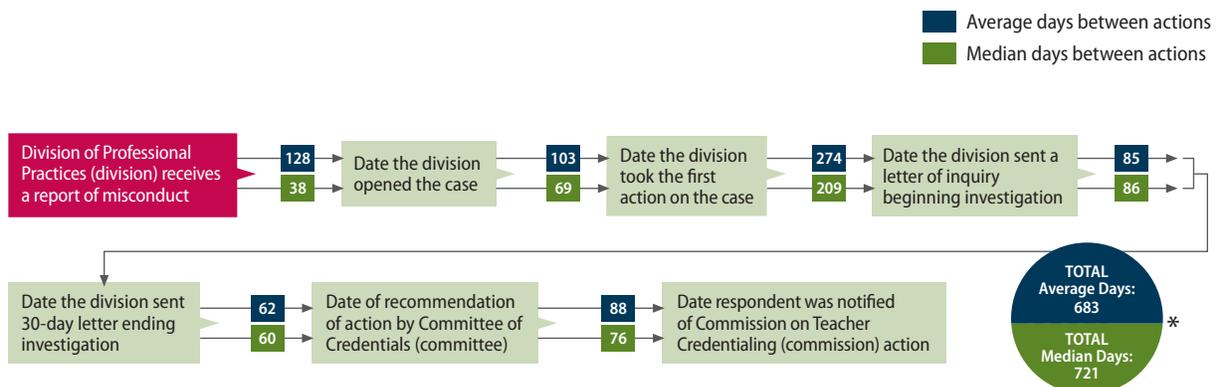
We found that the Division of Professional Practices (division) has not always promptly and effectively investigated reports of educator misconduct. According to the division's manager, due to the insufficient number of trained staff, an ineffective and inefficient processes, and the lack of an automated system for tracking the division's workload, the division has experienced significant workload backlogs. In the summer of 2009, the executive director acknowledged a backlog of 12,600 unprocessed Reports of Arrests and Prosecutions (RAP sheets)—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 division had reviewed the RAP sheets when received and processed those for which the offenders may have presented a high risk to students. However, we noted instances of delayed processing for reports of misconduct regarding serious misconduct that originate from sources other than RAP sheets.

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

We examined a random sample of 29 cases closed by the division or reviewed by the committee between July 2009 and October 2010 and determined that the commission sometimes took significant periods of time to accomplish certain critical steps. Figure 4 from the report shows critical steps in the division's process and the average times to perform those steps.

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.

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 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 a report of one teacher who resigned after making inappropriate sexual comments to students.

According to the manager, although 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 more serious reports of misconduct first, responding to the less serious reports of misconduct as time and resources allow.

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

In addition to our random sample, we judgmentally selected and reviewed 30 cases because they appeared to have excessive processing times and involved particularly serious allegations of misconduct. The division experienced delays in critical steps in reviewing reported misconduct for all of these 30 additional cases. 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. As discussed above, under limited circumstances, a teacher's credential is automatically suspended or revoked, and most of those circumstances require that a teacher first be convicted of a crime before the suspension or revocation can occur. For another set of allegations, referred to as "discretionary" actions, the commission must make a determination regarding the existence of probable cause and the teacher's fitness to teach before any action may be taken against the credential. Almost all of the teachers involved in our judgmentally selected sample of 30 cases that appeared to have delayed processing times and serious allegations of misconduct ultimately had their credentials revoked or suspended for various offenses. However, during the case processing period, those teachers are permitted by law to retain their credentials and potentially remain in the classroom. 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.

The division's manager attributed the delays in processing to workload issues such as employee turnover, and worker furlough days, and to the fact that the committee can review only about 60 cases per monthly meeting, causing some cases to be delayed while they wait for committee review.

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

Of the 11 open cases we reviewed with the potential for mandatory adverse action, we found six for which the database the division uses to track its caseload did not reflect any activity for at least four months prior to our inquiries. Criminal charges against the credential holders included child cruelty with possible injury, possession of a controlled substance, and annoying or molesting a child.

The division often delayed seeking information needed to review reports of misconduct. The division told us they began to improve their processes in February 2010 so we selected a random sample of cases from both before and after that point in time. We identified the following delays between the commission's receipt of a report of misconduct and the date the commission first requested additional information:

- From a random sample of 15 cases closed prior to February 2010, the division took an average of 188 days between the receipt of a report of misconduct and when it first requested additional information.
- For 12 of the 14 cases we reviewed that were closed after February 2010, we determined that it took the commission an average of 319 days to first request additional information after receiving an allegation of misconduct.

Additionally, the division does not always investigate school reports of misconduct while criminal investigations are unresolved. For a random sample of cases with school reports closed before February 2010, the division sought information for only two; 320 and 342 days, respectively, after receiving the initial school report. For 15 cases closed after February 2010 the division sought information for seven, and did so within an average of 82 days after receiving the school report.

The division has not always effectively processed RAP sheets. Some RAP sheets are difficult to locate in the database because of the division's prior data entry practices, which lacked consistency, inhibiting the division's ability to identify credential holders' prior criminal history. For a random sample of 30 RAP sheets submitted by Justice before February 2010, 13 were not included in the database and we were unable to determine whether the database contained five others. We did not find similar problems with RAP sheets processed after February 2010, when the division changed its process.

The division did not always immediately suspend or revoke credentials where the law requires it to do so. Even after receiving information that required it to immediately impose a suspension or revocation, for two cases in a random sample of 23 RAP sheets with offenses that required mandatory action, the division took one and a half months and six months, respectively, to act.

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

To Compensate for the Committee's Limited Ability to Review Reports of Misconduct, Division Staff Exercises Discretion to Close Certain Cases Without Review by the Committee

State law requires that each allegation of misconduct for which a credential holder or applicant may be subject to adverse action be presented to the committee. State law also delegates to the commission's executive director any power, function, or duty that may be lawfully delegated. Numerous California courts have held that a state body may not, except in very limited circumstances, delegate to others, the exercise of the state body's discretionary authority. There exists extensive legal support for the rule that, unless a state body provides staff with explicit direction and guidelines, staff may not make discretionary decisions the state body is statutorily required to make.

Although the division opens roughly 5,000 cases a year, the committee can review only about 50 to 60 cases each month. To streamline the committee's workload, division staff closes cases where the committee has jurisdiction to investigate, but without presenting the cases to the committee for its consideration, review or approval of the division's actions to close them. 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 by division legal counsel. Many of these staff decisions necessarily require staff to exercise discretion that is statutorily vested in the committee itself.

We reviewed a sample of 168 cases that the division 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. Fifty-nine of these cases were applications the division approved without review by the committee even though the applicants failed to disclose convictions. An applicant's failure to disclose misconduct gives the committee jurisdiction to investigate the misconduct and is cause for denying an application.

In making these decisions, division staff relies on informal guidelines developed by management and legal counsel as part of an evolving process based on 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 to division staff through informal memoranda, emails, and handouts. Because the guidelines lack sufficient specificity and have not been formally approved or adopted by a quorum of the committee, we found that, by permitting division 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.

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

Based on our testing of randomly sampled transactions, the database the division uses to manage its workload is not sufficiently reliable to identify the following:

- The number of various types of reports of misconduct the division received.
- The actions taken by the committee.
- Recommendations for adverse action.
- For cases opened between January 2007 through June 2010, the number of days between the date the division opened and closed a case that the committee did not review.

The information in the database, such as requests for additional information about a case or the dates of investigative activities, was not always consistent with the source documents in the paper case files.

The division lacked adequate controls over changes or adjustments to data entered into the database. Because the system contained no link between a deleted record and the individual to which the record pertains, we were unable to determine if deletions were appropriate.

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 do not address the following problems we identified during our review of the division's investigation of reports of educator misconduct:

- The reports are produced from the database that we determined not to be sufficiently reliable for critical case tracking information.
- The newly created Monthly Executive Summary report does not contain information on school reports or other notifications that can result in the division opening and investigating a case.
- Many of the division's new reporting tools lack information pertaining to case status that would allow managers to understand the reasons for delays in case processing time. To gain such an understanding, management told us they would have to review the paper case files. As a result, we question the benefit of the current case tracking reports.
- The current set of case tracking reports do not cover cases after investigators issue letters to applicants or holders notifying them of the committee hearing to discuss their case. During that period, investigators can close cases without approval from managers.
- According to the division manager, the current case tracking reports do not reflect the status of the investigative process for each case, but only the status of specific phases. Although the December 20, 2010, report showed 813 cases with overdue activities related to specific phases of investigation, the division manager told us this was not an indication that the division was behind in its workload.
- The case tracking reports do not track the commission's statute-based time limitations for investigating reports of misconduct.

In addition, the division has not engaged in effective strategic planning or addressed the following in its operations for investigating reported teacher misconduct:

- Steps the division can take to counter the committee's limitations on the number of misconduct cases it can review each month—about 50 to 60 cases each month.
- The division has not collected the workload data needed to identify performance data necessary to develop staffing needs and to help ensure it avoids future workload backlogs.
- The division lacks comprehensive written procedures to ensure the consistency of its misconduct reviews, provide management's expectations to staff, provide direction regarding the correct method used to process transactions, and to serve as a reference guide for existing employees and a training tool for new employees.

FAMILIAL RELATIONSHIPS CONTRIBUTE TO EMPLOYEES' PERCEPTIONS THAT THE COMMISSION'S HIRING AND PROMOTION PRACTICES ARE COMPROMISED

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

We administered a survey to 188 commission employees, of whom 136 (72 percent) responded. Forty percent of the respondents indicated that they felt the commission's hiring and promotion practices were compromised by familial relationships or employee favoritism and half of those responded that this was often a problem.

Overall, respondents to our survey identified 24 current and previous employees whom they perceived are or were at one time related to one another. Respondents also identified some commission employees who the respondents perceived as being favorites or personal friends of commission managers.

Our review of the commission's hiring and promotion practices revealed the following:

- The commission struggled to identify the specific policies and procedures the commission uses when making hiring and promotional decisions, relying instead on various manuals, exposing its hiring practices to claims of inconsistency.
- Of the three eligibility exams we reviewed, the office of human resources allowed one eligibility exam to take place even though the human resources manager knew that one of the candidates was the sibling of a member of the exam panel.
- In four of the seven appointments we reviewed, the commission did not retain hiring documentation or appointment justification for the individuals it selected.
- We reviewed the appointments of three student assistants and found one instance where, for a student assistant respondents to our survey identified as related to another employee, the commission accepted her application even though it was submitted 49 days after the filing deadline. The division manager hired the student assistant without an interview 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.

Many surveyed employees reported that they were not aware of the commission's grievance process or EEO policy—33 percent were unaware of the grievance process and 20 percent were unaware of the EEO policy.

RECOMMENDATIONS

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.

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.

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.

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.