Proposed Regulatory Text

Text proposed to be amended by this Commission meeting is shown in in double underline for additions and ~~double strike-out~~ for deletions.

California Code of Regulations
Title 5. Education
Division 8. Commission on Teacher Credentialing
Chapter 1. Credentials Issued Under the Teacher Preparation and Licensing Law of 1970
Article 6. ~~Positions Requiring Administrative Credentials or Supervision Credentials~~ Educator Assignments and Monitoring.

§80130. Definitions.

(a) For purposes of this section, the following definitions and identifications apply:

(1) **"Certification"** means any credential, permit, waiver, or other document issued by the commission authorizing instruction or services in California public schools.

(2) **"Fully credentialed teacher"** means an individual who holds a valid and unexpired California Preliminary or Clear credential ~~certification~~ authorizing teaching. For general education or special education assignments the certification must be a Preliminary or Clear certification issued based on the completion of a teacher preparation program, including student teaching or an equivalent alternative program, as defined in subdivision (e) of Section 44225.7. For career technical education assignments the certification must be a Preliminary or Clear credential ~~certification~~, based on completion of requirements defined in Section 80034.2.

(3) **"Assignment"** means the placement of an individual in a teaching or services position. An "assignment" ~~that~~ can be filled legally by an individual with a credential, permit, waiver, or any other certification issued by the commission authorizing the assignment, or the individual may be otherwise authorized by a Local Assignment Option~~statute or regulations~~.

(4) **"Permanent ~~A~~assigned teacher"** means an educator serving as a teacher has been employed to provide instruction for either the entire school year or, for a one-semester course, for the entire semester.

(5) **"Appropriately assigned"** means the teacher or service provider holds a credential, permit, waiver, or any other certification issued by the commission that contains an authorization to legally serve in the setting, in the grade level, in the subject area, and the pupil population associated with the assignment.

(6) **"Unfilled position**" means an instance where a local educational agency has attempted to fill or is actively trying to fill an open and funded position but is unable to do so.

(7) **"Vacant position**" means an instance where, as of census day, an assignment does not have a ~~n~~ permanent assigned teacher, as defined in (a)(4). An educator reported as the teacher of record that holds only a commission-issued certification that authorizes serving only as a substitute or temporary teacher of record shall be identified as serving in a vacant position.

(8) "**Misassignment"** means the placement of an employee or contractor in a teaching or services position or assignment for which the individual ~~employee~~ does not hold a legally recognized certificate or credential or the placement of an employee or contractor in a teaching or services position or assignment that the individual is not otherwise authorized by statute to hold.~~certification issued by the commission, and is not otherwise authorized by a local assignment option.~~

(9) "**Monitoring authority"** is defined as the entity that is responsible for evaluating a local educational agency's assignments for meeting legal requirements. Monitoring authorities, as defined in Section 44258.9, are identified as follows:

(A) The county office of education serves as the monitoring authority for school districts in the county and programs operated by the county office of education.

(B) The commission serves as the monitoring authority for the following entities:

1. A school district or county office of education that operates within a city or county in which there is a single school district, including the Counties of Alpine, Amador, Del Norte, Mariposa, Plumas, and Sierra, and the City and County of San Francisco;

2. State special schools;

3. A charter school in a school district in which the charter school is the only school site in the school district; and

4. A charter school authorized by the State Board of Education.

(C) The chartering authority serves as the monitoring authority for charter schools that they authorize.

(10) "**Local educational agency**" (LEA) refers to public school districts, programs authorized by county offices of education, alternative schools including but not limited to juvenile court schools or continuation schools, charter schools, and state special schools.

(11) "**Department**" refers to the California Department of Education.

(12) **"California Longitudinal Pupil Achievement Data System"** (CALPADS) refers to the data system the department uses to track staff assignments, pursuant to Section 60900. This data is used for annual assignment monitoring, pursuant to the data sharing agreement provided in Section 44258.9.

(13) "**System**," unless the context requires otherwise, as provided in Section 44258.9 means the California Statewide Assignment Accountability System (CalSAAS), which is a partially automated electronic data system administered by the commission for the annual monitoring of certificated educator assignments and vacant positions, through the comparison of an educator's assignment, as reported in CALPADS, and the educator's certifications issued by the commission.

(14) **"Census Day"** means the first Wednesday in October, annually, on which educator assignments are reported in CALPADS. Assignments reported by local educational agencies as being in place on census day are used in annual monitoring of certificated educator assignments in the System.

(15) **"Local Assignment Options"** (LAOs) are provisions within Education Code and Title 5 Regulations which provide a local educational agency with educator assignment options that can be used to 1) legally authorize fully credentialed educators to teach outside of their subject matter area, or 2) legally authorize individuals to serve in limited specified services positions, when it is unable to assign a certificated employee with the appropriate certification issued by the commission. This local level flexibility is used solely at the discretion of the local educational agency and requires the local educational agency to verify all statutory or regulatory requirements.

NOTE: Authority cited: Sections 44225, 44258.9 Education Code. Reference: Sections 33126, 44225.7, 60900 Education Code.

§80131. Assignments Requiring Certification.

(a) Instructional assignments requiring certification are those in which any of the following conditions are met:

(1) Pupils receive course credit, or

(2) Course is counted towards instructional minutes, or

(3) The commission issues a certification authorizing the instruction or services required of the assignment, consistent with Section 44001.

(b) Individuals serving in non-instructional and service assignments that do not meet the requirements of subsection (a), must hold a commission issued certification that authorizes the services required of the position, consistent with Section 44001.

(c) A teacher providing instruction to students must hold a certification authorization to legally teach in the setting, in the subject area, in the grade level, and to the pupil populations associated with the assignment. This includes services required for students with an Individualized Education Program, as defined in Section 56032, and students identified as multilingual or English Learners.

(d) Volunteers may provide enrichment instruction to enhance student learning but must be subject to the immediate supervision and direction of the permanent certificated educator assigned to the class. This permanent educator must hold the appropriate commission issued certification for the assignment and must remain in the classroom at all times.

(e) Paraeducators and instructional aides may assist with supervising students and support the teacher in their instructional tasks, but are not authorized to perform any duties that must be executed by a certificated educator, including assigning grades to students.

(f) Although monitoring of certificated educator assignments is based on census day data, a local educational agency is responsible for ensuring individuals placed in certificated assignments are legally authorized year-round.

(g) District Superintendents are responsible for the appropriate assignment of educators employed by their district, as provided in Section 35035. District Governing Boards are responsible for ensuring assignments are staffed with appropriately assigned educators, as provided in Section 44830. School site administrators are responsible for recruitment, employment and assignment of certificated personnel, as specified in Section 80054.5.

(h) County offices and school districts are prohibited from paying the salary of any person who does not hold a legal certification document while employed in a position requiring certification qualifications.

NOTE: Authority cited: Sections 44225, 44258.9 Education Code. Reference: Sections 35021, 35035, 44001, 44253.1, 44830, 45034, 45330, 45343, 45344, 45349, 56032 Education Code.

§80132. Teacher Shortage Hierarchy.

(a) The commission identifies an instance of teacher shortage through collective review of the following factors:

(1) Level of teacher preparation the educator has completed;

(2) Extent of subject matter competence demonstrated; and

(3) Whether the educator held a legal authorization for the assignment via licensure, statute, or regulation.

(b) For purposes of data collection and reporting, t~~T~~he hierarchy of teacher shortage assignments in instances where an educator is not appropriately assigned with full certification is listed below in order from least to most severe:

(1) General or Special Education Limited Assignment Permit holders;

(2) Local Assignment Options;

(3) Intern credential holders, including district and university interns;

(4) Preliminary or Clear credential holders that are misassigned;

(5) Emergency Teaching Permit holders, including Provisional Internship Permit (PIP), Short Term Staff Permit (STSP), Emergency Cross-cultural, Language and Academic Development (CLAD) Permit, and Emergency Bilingual Permit;

(6) Waiver holders;

(7) Holders of certifications other than Preliminary or Clear credentials that are misassigned; ~~Uncredentialed educators, vacancies, unfilled assignments, and Substitute Permit holders.~~

(8) Unfilled positions and vacant positions.

NOTE: Authority cited: Sections 44225, 44258.9 Education Code.

§80133. Hiring Hierarchy.

(a) When assigning educators, local educational agencies must recruit in the following hierarchal order:

(1) Educators who hold Preliminary or Clear credentials~~certifications~~, as defined in 44259, that contain an authorization that allows instruction in the content of the course, to the student population served, and/or services required of the position; including full, Supplementary and Subject Matter authorizations as defined in Section 44256.

(2) Educators who hold Preliminary or Clear credentials, as defined in Section 44259, and do not have an authorization that covers the course content or services required of the assignment, but are otherwise legally authorized via a local assignment option. ~~Educators who hold Intern certifications, as provided in Sections 44325 and 44450, that~~

~~contain an authorization that allows instruction in the content of the course, to the student population served, and/or services required of the position; including full, Supplementary and Subject Matter authorizations as defined in Section 44256.~~

(3) Educators who hold Intern credentials, as provided in Sections 44325 and 44450, that contain an authorization that allows instruction in the content of the course, to the student population served, and/or services required of the position; including full, Supplementary and Subject Matter authorizations as defined in Section 44256. ~~Educators who hold Preliminary or Clear certifications, as defined in Section 44259, and do not have an authorization that covers the course content or services required of the assignment, but are otherwise legally authorized via a local assignment option.~~

(4) Educators who hold Emergency Permits as provided in Section 44300.

(5) Educators who hold waivers, as provided in Section 44225, or are serving based on short-term waivers as defined in 80120 and 80123.

(b) If a suitable educator satisfying the requirements provided in (a)(1) is not found, the local educational agency shall continue to recruit accordingly in hierarchical order. Instances in which no suitable educator is able to be recruited, and an educator holding only a certification authorizing substitute teaching, or a person who does not have any valid credential or certification document, is placed in the position, shall be considered a vacant position.

NOTE: Authority cited: Section 44225 Education Code. Reference: Sections 44225, 44225.7, 44256, 44259, 44300, 44325, 44450 Education Code.

§80134. Reporting and Correcting ~~Potential~~ Misassignments.

(a) An individual concerned about the possible misassignment of an educator, or an educator concerned about their own possible misassignment, shall first notify the following entity, in writing:

(1) For non-charter schools, the superintendent of the school district;

(2) For charter schools authorized by the district or county, and schools authorized by the State, the school site administrator;

(b) Such notification shall equate to a complaint under Education Code section 35186, shall, where identifying a valid misassignment, require the same remedial actions as set forth in that section and shall follow the aligned timelines for responding to complaints, correcting misassignments and escalating to monitoring authorities as set forth in this section.

~~(b)~~ (c) A school district, county office of education, or commission, as specified in (a) ~~or (c)~~, must analyze the complaint and conduct a thorough investigation to determine the legality

of the educator's certificated assignment. Within 15 ~~business~~ working days of receipt of the complaint concerning an assignment, notification of the legality of the assignment must be sent, in writing:

(1) For non-charter schools, to the complainant, school site administrator, ~~and~~ district superintendent, and county superintendent ~~if applicable~~;

(2) For charter schools, to the complainant, school site administrator, superintendent of chartering district or county, and governing board of chartering district or county.

~~(c)~~ (d) If a complaint is filed pursuant to subsection (a), and the entity does not complete actions specified in subsection ~~(b)~~ (c), then the complaint shall be escalated in the following manner~~:~~. The entity listed below must analyze the complaint and conduct a thorough investigation to determine the legality of the educator's certificated assignment. Within 15 working days of receipt of the complaint concerning an assignment, notification of the legality of the assignment must be sent, in writing, in accordance with (c)(1) and (c)(2).

(1) Complaints lodged against non-charter schools and county authorized charter schools, shall be escalated to the county office of education;

(2) Complaints lodged against district authorized charter schools shall be escalated to the authorizing school district;

(3) Complaints lodged against schools within a school district or county office of education that operates within a city or county in which there is a single school district, shall be escalated to the commission.

(4) Complaints lodged against schools authorized by the State shall be escalated to the commission.

~~(d)~~ (e) If the assignment is determined to be a misassignment, pursuant to subsection (c), the local educational agency must correct the misassignment within 30 working days from the date of identification, pursuant to Section 35186. If the assignment is determined to be a misassignment pursuant to subsection (d), the local educational agency must correct the misassignment within 30 calendar days from the date of identification, pursuant to Section 44258.9. Correction options may include, but are not limited to:

(1) issuance of an emergency permit, waiver, or other certification authorizing the assignment,

(2) legally authorizing the educator based on a local assignment option, or

(3) removing the educator from the assignment and placing a legally authorized educator in the assignment.

~~(e)~~ (f) In the case that the individual reporting the potential misassignment is an employee of the local educational agency, the local educational agency must not take adverse action against the individual, as provided in Section 44258.9. Claims that reporting the potential misassignment resulted in employment related retaliation are not under the purview of the Commission on Teacher Credentialing and must be directed to the local educational agency. Claims of retaliation against a credentialed educator may be reported to the Division of Licensure Enforcement within the Commission on Teacher Credentialing, pursuant to Section 44242.5, by filing a complaint.

(g) During the period of a misassignment, a certificated educator who files a written notice about their own possible misassignment pursuant to subsection (a) shall be exempt from Section 45034.

NOTE: Authority cited: Sections 35186, 44258.9, 45034. Education Code. Reference: Section 44242.5. Education Code.

California Code of Regulations
Title 5. Education
Division 8. Commission on Teacher Credentialing
Chapter 3. Committee of Credentials
Article 3. Rules of Conduct for Professional Educators

Section 80339 is repealed.

Section 80339.1 is repealed.

Section 80339.2 is repealed.

Section 80339.3 is repealed.

Section 80339.4 is repealed.

Section 80339.5 is repealed.

Section 80339.6 is repealed.