

HK School Law

MONTHLY NEWSLETTER



AB 449: MANDATED REPORTING REQUIREMENTS FOR CHARTER SCHOOL ADMINISTRATORS

Chaptered by the Secretary of State on September 6, 2013 and effective January 1, 2014, Assembly Bill 449 ("AB 449") holds charter school administrators accountable – and potentially criminally liable – for failing to report allegations of credentialed teacher misconduct.



SENATE AND ASSEMBLY ANALYSIS OF THE NEED FOR THE LAW

According to AB 449's author, in November 2012, the California State Auditor released a report regarding Los Angeles Unified School District's (LAUSD) handling of allegations of teacher misconduct. The State Auditor found that LAUSD failed to timely report at least 144 cases of teacher misconduct when required to do so, with at least 31 of these cases reported three years late. As a result, the Commission on Teacher Credentialing ("CTC") was not able to review teachers who may have been unfit for the classroom. In particular, the State Auditor's report highlighted one case where the superintendent failed to report an allegation of sexual misconduct for three years. This teacher allegedly had a sexual relationship with a student; however the district's lack of timely reporting meant that for three and a half years the CTC could not take any steps to revoke the teacher's certificate and thus prevent the teacher from working in other school districts. Reporting delays not only jeopardized the safety of the students at the teacher's current school, but also any school district throughout the state. The lack of timely reporting prevented the CTC from taking action to revoke a teacher's certificate, and thus prevent the teacher from working in other school districts. AB 449 was the legislature's attempt to close this loophole in the current law and guarantee that reporting employers, including charter school administrators, fulfill their obligations to ensure the safety and welfare of children they serve.



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According to Senate and Assembly reports, lawmakers felt that existing law did not clearly state that it is a reporting employer's duty to report to the CTC when a school district takes employment action against a credential holder as a result of an

allegation of misconduct, and did not grant the CTC clear authority to hold a reporting employer accountable for failure to make such a report.

Additionally, the State Auditor's report found that LAUSD reported many cases that did not require reporting, thereby unnecessarily amplifying the workload for the CTC. By improperly labeling and reporting as "misconduct" unsatisfactory teaching performance, lay-offs, or reduction in work force, school districts consumed valuable CTC resources that should have been invested in reviewing final employment actions arising from genuine misconduct, such as sexual misconduct. AB 449 clarifies that such cases are not considered as allegations of misconduct and helps eliminate reporting of such cases to the CTC where the final employment actions do not arise from true misconduct.

AB 449'S REPORTING REQUIREMENTS APPLY TO CHARTER SCHOOLS

Although charter schools normally would be exempt from new Education Code requirements, the Education Code's so-called "megawaiver" (California Education Code section 47610) does not insulate charters from the requirements of AB 449.

In fact, AB 449 expressly applies to charter schools. As enacted, the law reads: "The superintendent of a school district or county office of education, or the administrator of a charter school, employing a person with a credential shall report any change in the employment status of the credential holder to the commission not later than 30 days after the change in employment status, if the credential holder, while working in a position requiring a credential, and as a result of an allegation of misconduct or while an allegation of misconduct is pending, is dismissed, is nonreelected, resigns, is suspended or placed on unpaid administrative leave for more than 10 days as a final adverse action, retires, or is otherwise terminated by a decision not to employ or reemploy." EC 44030.5(a) (emphasis added).

While most charter schools are aware of current reporting duties with regard to teacher misconduct, AB 449 puts "teeth" into the law by placing an affirmative duty under the law to report a change in a credentialed employee's employment status when that employee is dismissed, resigns, is suspended or placed on administrative leave for more than 10 days, among other things. Indeed, should a charter school administrator fail to report such a change in employment status, the potential sanctions and penalties, which include criminal penalties, can be significant.

EXISTING LAW

Existing Education law in California long ago established the Commission on Teacher Credentialing to, among other things, issue teaching and services credentials. Existing law further required the Commission to appoint a Committee of Credentials and requires allegations of acts or omissions for which adverse action may be taken against applicants or holders of teaching or

services credentials to be reported to this Committee. The Committee of Credentials is authorized to commence an initial or formal review upon receipt of, among other things, a statement from an employer notifying the commission that an employee's employment status has changed as a result of, or during the pendency of, an allegation of misconduct.

California Education Code section 44030 already states that any principal, teacher, employee, or school officer of any elementary or secondary school who "refuses or willfully neglects to make such reports as are required by law" is guilty of a misdemeanor and is punishable by a fine of not more than \$100. However, it is important to note that Section 44030 does not specify with any clarity what "reports" are "required by law."

Strengthening the reporting requirements under existing law, AB 449 adds a new Section 44030.5 to California's Education Code and states that if a school district or county superintendent or administrator of a charter school fails to report to the Commission on Teacher Credentialing (CTC) when a certificated employee has a change in employment status based on an allegation of misconduct, that person may be subject to adverse action by the Commission on Teacher Credentialing and makes such a failure a misdemeanor punishable by a fine of between \$500 and \$1,000.

OVERVIEW OF THE COMMISSION ON TEACHER CREDENTIALING'S REVIEW OF ALLEGATIONS OF MISCONDUCT

As stated above, AB 449 creates a statutory duty for a charter school administrator to report teacher and employee misconduct to the California Commission on Teacher Credentialing (CTC). AB 449 requires the administrator of a charter school to report any change in the employment status of a credential holder working in a position requiring a credential not later than 30 days after the credential holder's employment status changes as a result of an allegation of misconduct or while an allegation of misconduct is pending.

Based on AB 449's amendment of Education Code section 44242.5, the Committee of Credentials has jurisdiction to commence an initial review upon receipt of any of the following:

- Official records of the Department of Justice, of a law enforcement agency of a state or federal court, and of any other agency of this state or another state.
- An affidavit or declaration signed by a person or persons with personal knowledge of the acts alleged to constitute misconduct.
- A statement from an employer notifying the commission that, as a result of an allegation of misconduct, or while an allegation of misconduct is pending, a credential holder has been dismissed, nonreelected, suspended for more than 10 days, or placed pursuant to a final adverse employment

action on unpaid administrative leave for more than 10 days, or has resigned or otherwise left employment.

- A notice from an employer that a complaint was filed with the school district alleging sexual misconduct by a credential holder.
- A notice from a school district, employer, public agency, or testing administrator of a violation of the following Education Code sections:
 - 44420: Any person employed by a school district in position requiring certification qualifications refuses, without good cause, to fulfill a valid contract of employment with the district or leave the service of the district without the consent of the superintendent;
 - 44421.1: A credential holder knowingly and willfully uses school records of pupil data in connection with, or implicitly or explicitly attempts to recruit a pupil to be a customer for, any business owned by the credential holder or in which the credential holder is an employee;
 - 44421.5: A credential holder knowingly and willfully reports false fiscal expenditure data relative to the conduct of any educational program; and
 - 44439: An applicant or credential holder subverts or attempts to subvert any licensing examination or administration of examination.
- An affirmative response by an applicant submitted to the commission as to any conviction, adverse action on, or denial of, a license, or pending investigation into a criminal allegation or pending investigation of a noncriminal allegation of misconduct by a governmental licensing entity.

It is most likely that charter schools will report based on an affidavit, an employer's statement of alleged misconduct or both. Conference with legal counsel is highly recommended to ensure that reports are complete and accurate and fulfill the statutory reporting requirements imposed by AB 449.

Upon completion of an investigation, the Committee must report its actions and recommendations to the CTC, including findings as to probable cause, and if probable cause exists, its recommendations as to the appropriate adverse action.

"Adverse action" by the commission for failure by the administrator of a charter school could mean any number of penalties, including, but not limited to the following: probation, private admonition or public reproof, revocation or suspension.

The findings of the Commission are available, upon request, to the employing or last known employing school district (or charter school), or if adverse action is recommended by the committee and the credential holder has not filed a timely appeal of the recommendation of the committee, upon a request made within five years of the date of the Committee's recommendations to a

school district providing verification that the credential holder has applied for employment in the school district.

The findings remain confidential and limited to school district personnel in a direct supervisory capacity in relation to the person investigated. Any person who releases findings received from the committee or the commission, absent a verified release signed by the person who is the subject of the investigation, shall be guilty of a misdemeanor.

It is important to note that AB 449 expressly states that a change in employment status due solely to unsatisfactory performance or a reduction in force is not a result of an allegation of misconduct for purposes of those provisions. Thus, such a change in employment status would not require reporting to the Committee.

FAILURE TO REPORT

Under the guidelines of AB 449, the failure of a charter school administrator to make the report classifies such a failure as “unprofessional conduct,” subjects the administrator to adverse action by the Commission for the failure to report and makes the refusal or willful neglect to make the report a misdemeanor, including fines of up to \$1000. By imposing additional duties on local agencies and by creating a new crime, this bill imposes a state-mandated local program.

QUESTIONS?

As always, if you have questions about this newsletter or any other matter, please call us at any time for guidance.