

Chapter 578: Reducing the Discretion of the California Commission on Teacher Credentialing

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Code Sections Affected

Education Code §§ 44423.5, 44423.6 (new).
SB 1110 (Scott); 2008 STAT. Ch. 578.

I. INTRODUCTION

In 2007, the Associated Press (AP) conducted a seven-month investigation into educator misconduct at public schools throughout the nation.¹ Reporters found story after story of young students who were sexually harassed, inappropriately touched, and even raped.² The perpetrators, while of various ages and backgrounds, all had one thing in common: they were educators in the public school system.³ The investigation revealed that twenty-five percent of disciplinary actions against educators were a result of sexual misconduct.⁴ It further found that between 2001 and 2005, 2,570 educators had their credentials “revoked, denied, surrendered, or sanctioned” due to allegations of sexual misconduct.⁵

In California alone, school administrators suspended or revoked the credentials of 313 educators for sexual misconduct between 2001 and 2005.⁶ The AP determined that, while some states were taking steps to prevent such incidents, loopholes still existed in California law that increased the chances of student exposure to teachers with a history of sexual misconduct.⁷ In response to these findings, and to “strengthen the state’s ability to protect children from educators who have engaged in serious misconduct,” Senator Jack Scott

1. Martha Irvine & Robert Tanner, *Sex Abuse a Shadow over U.S. Schools*, EDUC. WEEK, Oct. 24, 2007, at 16 (on file with the *McGeorge Law Review*).

2. *Id.* at 1.

3. *Id.*

4. SENATE COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF SB 1110, at 3 (Mar. 26, 2008).

5. *Id.*

6. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1110, at 3 (Apr. 16, 2008).

7. Irvine & Tanner, *supra* note 1, at 19 (“More states now require background checks on teachers, fingerprinting, and mandatory reporting of abuse, but there are still loopholes and a lack of coordination among districts and states.”); SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1110, at 3-4 (Apr. 16, 2008) (describing the loopholes, identified by the AP, that SB 1110 would close).

introduced SB 1110.⁸ Later enacted as Chapter 578,⁹ it closes the loopholes in California law that were identified in the AP investigation.¹⁰

II. BACKGROUND

A. Educator Discipline in California

The California Commission on Teacher Credentialing (CTC)¹¹ is required to privately admonish, publicly reprove, revoke, or suspend for immoral or unprofessional conduct, or for persistent defiance of, and refusal to obey, the laws regulating the duties of persons serving in the public school system, or for any cause which would have warranted the denial of an application for a credential or the renewal thereof, or for evident unfitness for service.¹² The CTC's actions on a credential¹³ depend on the nature of the alleged incident.¹⁴

Certain offenses require the CTC to deny or revoke a credential.¹⁵ For example, if an individual has been convicted of a certain sex offense¹⁶ or controlled substance offense,¹⁷ has been found legally insane or determined to be a sexual psychopath,¹⁸ or has been convicted of a violent or serious felony,¹⁹ the credential must be revoked or denied.²⁰ For acts or omissions outside these

8. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1110, at 3 (Apr. 16, 2008).

9. CAL. EDUC. CODE §§ 44423.5, 44423.6 (enacted by Chapter 578); SB 1110 Complete Bill History (2008), http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb_101-1150/sb_1110_bill_20080929_history.html (on file with the *McGeorge Law Review*).

10. *Id.*

11. The CTC was created in 1970 to act as a state standards board for the preparation of educators employed in California's public schools. California Commission on Teacher Credentialing, About the Commission, <http://www.ctc.ca.gov/commission/about.html> (last visited Jan. 30, 2009) (on file with the *McGeorge Law Review*).

12. CAL. EDUC. CODE § 44421 (West 2006).

13. A basic teaching credential, issued by the CTC after certain minimum requirements are met, "authorizes the holder to teach the subjects named on the credential." *Id.* § 44203(e)(1)-(2) (West 2006).

14. See California Commission on Teacher Credentialing, Educator Discipline FAQs, <http://www.ctc.ca.gov/educator-discipline/DPP-FAQ.html> (last visited Jan. 30, 2009) [hereinafter Discipline FAQs] (on file with the *McGeorge Law Review*) (explaining the different actions that the CTC may take on a credential).

15. CAL. EDUC. CODE § 44346 (West 2006); see also Discipline FAQs, *supra* note 14 (providing a summary of the types of misconduct that require the CTC to "automatically deny or revoke" an educator's credential).

16. CAL. EDUC. CODE § 44010 (West 2006) (providing the definition of sex offense). This also applies if an individual must register as a sex offender pursuant to either (1) Penal Code section 290, or (2) "[a] law of any other state or of the United States when the underlying offense, if committed or attempted in this state, would require registration as a sex offender under Section 290 of the Penal Code." *Id.* § 44346.

17. *Id.* § 44011 (providing the definition of controlled substance offense).

18. *Id.* § 44346 (providing the definition of sexual psychopath).

19. *Id.* § 44424 (providing the definition of a violent or serious felony).

20. See *id.* §§ 44346(b)(1), (c)-(d), 44346.1(d) (describing exceptions to mandatory revocation or denial).

categories, the CTC has more discretion regarding what type of action to take on an educator's credential, if any.²¹

The CTC sends allegations of educator misconduct to the California Committee of Credentials (Committee), which is a seven-member disciplinary-review board.²² The Committee reviews allegations and makes a recommendation to the CTC regarding what action to take on the credential at issue.²³ The nature of allegations vary, and the CTC usually receives them from sources including, but not limited to, the Department of Justice, affidavits from persons with knowledge of the alleged misconduct, and the educator's employer.²⁴ The CTC may revoke a credential in circumstances including an addiction to controlled substances, commission of an act involving moral turpitude, or revocation of a certification document.²⁵

When the Committee first receives an allegation, it commences an initial review to determine if probable cause exists for an adverse action on an educator's credential.²⁶ If probable cause does exist, the Committee, at the application of the credential holder or applicant, begins an adjudicatory hearing.²⁷ At the close of the adjudicatory hearing, the Committee determines what type of action to take on the credential and reports its findings and recommendations to the CTC.²⁸

During the Committee's review, an educator maintains his or her credential.²⁹ After the review, the Committee's findings are available to school districts on request within one year of the Committee's recommendation.³⁰ An educator whose credentials have been revoked or suspended may petition the CTC for reinstatement of the credential no less than one year after the date of revocation.³¹

21. See Discipline FAQs, *supra* note 14 (describing the types of misconduct that require an adverse action as compared to types of misconduct that only require a review by the Committee).

22. *Id.*

23. CAL. EDUC. CODE § 44242.5(e) (West 2006 & Supp. 2009).

24. *Id.* (listing sources that provide information to the CTC regarding an educator's misconduct).

25. *Id.* § 44345 (West 2006) (listing acts or omissions that constitute educator misconduct that lead to a discretionary review).

26. *Id.* § 44242.5(c)(3).

27. *Id.* § 44242.5(c)(3)(B). If the credential holder does not request an administrative hearing within the requisite time period, then the Committee's recommendations may be adopted by the CTC without further proceedings. *Id.* § 44244.1.

28. *Id.* § 44242.5(e)(1).

29. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1110, at 3 (Apr. 16, 2008).

30. CAL. EDUC. CODE § 44242.5(e)(2) (West 2006 & Supp. 2009). The school districts to whom this information is available are the district of employment or last known employment of the credential holder, or a district that is "providing verification that a credential holder has applied for employment in the district." *Id.*

31. Discipline FAQs, *supra* note 14.

B. *The 2007 AP Investigation*

The AP published a series of articles in 2007 relating to educator misconduct in the nation's public schools.³² The articles were based on a nationwide investigation that examined the differing procedures in each state regarding allegations of educator misconduct.³³ While the AP was "generally favorable" to California's procedures, it did identify certain loopholes in the system.³⁴

The AP's reporters first researched records of adverse actions on educator credentials in each state from 2001 to 2005, and then examined which adverse actions were based on sexual misconduct.³⁵ The AP found that during this time period, a total of 2,570 educators nationwide were punished for sexual misconduct.³⁶ The victims included 1,801 young people, 1,467 of which were students.³⁷ Four hundred and forty-six cases involved educators who had multiple victims.³⁸

The investigation also revealed a lack of coordination among districts and states that allowed educators with a history of sexual misconduct to remain in classrooms.³⁹ The study found that teachers accused of sexual misconduct often make a deal with a school district to "leave quietly" and the district takes no action at all on the credential.⁴⁰ Similarly troubling, while a state licensing board may take an adverse action on a credential for sexual misconduct, the record's description of the reason for punishment is extremely vague, leaving future employers in the dark as to why a teacher was punished.⁴¹ This was an especially pronounced issue in California at the time of the investigation—the AP found that 2,000 California teachers were punished under the broad category, "general misconduct."⁴² It took more investigative research to discover that over 300 of these teachers were punished specifically for sexual misconduct.⁴³

32. E-mail from Mary C. Armstrong, General Counsel, Cal. Comm'n on Teacher Credentialing, to author (May 30, 2008, 09:58:00 PST) [hereinafter Armstrong E-mail] (on file with the *McGeorge Law Review*).

33. *Overview: How the Project Unfolded*, EDUC. WEEK, Oct. 24, 2007, at 16 (on file with the *McGeorge Law Review*).

34. Armstrong E-mail, *supra* note 32.

35. *Overview: How the Project Unfolded*, *supra* note 33.

36. Irvine & Tanner, *supra* note 1, at 16. The punishment consisted of the educators having their credentials "revoked, denied surrendered, or sanctioned." *Id.*

37. *Id.* "Educators made physical contact in at least 1,297, or 72 percent, of the cases in which the victims were youths." *Id.* at 17.

38. *Id.*

39. *Id.* at 19.

40. *Id.* at 18.

41. *Id.* at 19.

42. Juliet Williams, *Calif. Teacher-Records Laws Help Hide Details in Cases of Sex-Related Misconduct: Past Misdeeds may be Off-Limits to Other Districts*, EDUC. WEEK, Oct. 24, 2007, at 19 (on file with the *McGeorge Law Review*).

43. *Id.*

Other aspects of the California system are also problematic.⁴⁴ Not only are the discipline records vague, they are often only available to school officials during a one-year window.⁴⁵ Additionally, if an educator has pled “no contest” to a charge, the CTC may not disclose the reason for his or her disciplinary action.⁴⁶ The investigation also revealed that a California educator who is under review by the CTC for having a credential revoked in another state may still hold a valid California credential during the review process and remain in the classroom.⁴⁷ Only a limited list of circumstances require that the CTC take an immediate adverse action on a credential.⁴⁸ Chapter 578 expands this limited list.⁴⁹

III. CHAPTER 578

Chapter 578 provides two additional circumstances under which the CTC must take action on an educator’s credential.⁵⁰ First, it requires the CTC to “suspend the credential of a holder when it receives notice that another state has taken final action to revoke a credential or license authorizing the holder of the license to perform any duty in the public schools of another state.”⁵¹ This suspension only takes effect once the CTC determines that the misconduct in the other state could also cause a revocation of the California credential and remains in effect “until the commission takes final action” based on the Committee’s review and recommendation.⁵²

Second, Chapter 578 requires the CTC to revoke a credential when it receives notice that either (1) the credential holder’s ability to “associate with minors has been limited as a term or condition of probation or sentencing resulting from a criminal conviction” anywhere in the United States,⁵³ subject to certain limitations,⁵⁴ or (2) the holder “has been ordered to surrender a credential or certification document as a term or condition of probation or sentencing resulting from a criminal conviction” anywhere in the United States.⁵⁵ In both circumstances, an individual whose credential has been revoked cannot reapply

44. *See id.* (explaining why the California system of teacher records is flawed).

45. *Id.*

46. *Id.* Pleas of no contest are “a common legal agreement that allows a person to avoid a trial or civil liability, but still leads to conviction.” *Id.*

47. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1110, at 3 (Apr. 16, 2008).

48. *Id.* at 1-2.

49. *See id.* at 1 (describing how Chapter 578 adds to the scenarios where the CTC must take an adverse action on a credential).

50. *Id.*

51. CAL. EDUC. CODE § 44423.5(a) (enacted by Chapter 578).

52. *Id.*

53. *Id.* § 44423.6(a)(1) (enacted by Chapter 578).

54. *Id.* § 44423.6(a)(2) (enacted by Chapter 578) (stating that § 44423.6(a)(1) “shall not apply to a conviction based solely on violating an order as set forth in subdivision (a) of Section 273.6 of the Penal Code”).

55. *Id.* § 44423.6(b) (enacted by Chapter 578).

for reinstatement of his or her credential until the terms or conditions of the conviction are satisfied.⁵⁶

IV. ANALYSIS

A. Chapter 578's Changes to Current Law

In enacting Chapter 578, the California Legislature addressed growing concerns regarding educator misconduct in California public schools highlighted by the AP investigation.⁵⁷ Unless an offense falls under a relatively narrow category of circumstances, the action the CTC may take on an educator's credential for misconduct is largely discretionary.⁵⁸ When the Committee finds that an educator has engaged in misconduct, the CTC often has the discretion to decide whether it will "privately admonish" or "publicly reprove" the educator, or suspend or revoke his or her credential.⁵⁹ Chapter 578 provides that, when certain types of allegations or convictions relating to an educator are brought to the CTC's attention, the CTC must take an immediate adverse action on the credential.⁶⁰

A major focus of Chapter 578 relates to out-of-state credential revocations.⁶¹ Prior to Chapter 578, if the CTC received notice that a credential holder's license had been revoked in another state, the Committee reviewed the matter and the educator maintained his or her credential in the meantime.⁶² Chapter 578 requires that when an educator's credential has been revoked in another state, his or her credential must be suspended while the Committee considers what final action to take.⁶³ The CTC usually discovers information regarding out-of-state credential revocation from the National Association of State Directors of Teacher Education and Certification (NASDTEC)⁶⁴ or from an affirmative answer to a fitness question on an application for credential renewal.⁶⁵

56. *Id.* § 44423.6(c) (enacted by Chapter 578).

57. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1110, at 3 (Apr. 16, 2008) (explaining that the "need for the bill" is based on the 2007 Associated Press study which "revealed that between 2001 and 2005, 313 California educators had their credential suspended or revoked as a result of sexual misconduct").

58. *See* CAL. EDUC. CODE § 44345 (West 2006) (stating that the CTC "may" deny the issuance or the renewal of a credential under many circumstances).

59. *Id.* § 44421.

60. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1110, at 2 (Apr. 16, 2008).

61. *See id.* at 3 (explaining the AP investigation and out-of-state credential revocations).

62. *Id.*

63. *Id.* at 1, 3. However, this mandatory suspension only applies if the reason for the out-of-state revocation is based on misconduct that would "be a cause for revocation in California." *Id.* at 3.

64. NASDTEC represents all professional standards boards, commissions, and state departments of education nationwide. National Association of State Directors of Teacher Education and Certification, NASDTEC General Information, <http://www.nasdtrec.org/about.tpl> (last visited Aug. 17, 2008) (on file with the *McGeorge Law Review*).

65. California Commission on Teacher Credentialing, Background Information on SB 1110 (Scott) (2008) [hereinafter CTC Bill Information] (on file with the *McGeorge Law Review*).

In the event of a criminal conviction, if the CTC receives notice that the terms of an educator's probation limit contact with minors or requires the individual to surrender credentialing or certification documents, Chapter 578 requires that the CTC automatically revoke the credential.⁶⁶ Prior to Chapter 578, if an educator was initially charged with a crime that required the revocation or suspension of a credential, but then plea-bargained it down to a lesser offense with terms of probation that limited contact with minors, the CTC could not suspend or revoke the credential until the Committee conducted an often lengthy discretionary review.⁶⁷ In addition, while prior law allowed application for reinstatement of the credential one year after the date of revocation, Chapter 578 only allows reinstatement after the terms of probation have been lifted.⁶⁸

Prior to Chapter 578, if the CTC received notice of restrictive probation terms or out-of-state credential revocation, the CTC sent the issue over to the Committee for review.⁶⁹ Throughout the review process, including appeal, the educator could keep his or her California credential.⁷⁰ After an educator requested an appeal, the administrative process usually lasted two to three years.⁷¹ By requiring a mandatory adverse action on an educator's credential under certain circumstances, Chapter 578 removes educators from the classroom who would otherwise remain teaching during the administrative review process.⁷²

Chapter 578's proponents include the California School Boards Association, which argues that Chapter 578 will make California schools safer by "expediting the removal" of teachers whose credentials have been revoked out of state or have convictions limiting contact with minors.⁷³ According to the CTC, a sponsor of Chapter 578, eliminating an often lengthy discretionary review allows the CTC to better "evaluate and monitor the moral fitness of credential . . . holders and take appropriate action" by removing questionable educators from the classroom.⁷⁴

The only opposition to Chapter 578 came from the California Teacher's Association (CTA).⁷⁵ One point of contention is the provision regarding mandatory revocation of credential when an educator has a conviction limiting his or her contact with minors.⁷⁶ The procedure to petition the CTC for

66. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1110, at 2 (Apr. 16, 2008).

67. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF SB 1110, at 2-3 (July 31, 2008).

68. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1110, at 2 (Apr. 16, 2008).

69. CTC Bill Information, *supra* note 65.

70. *Id.*

71. *Id.*

72. *Id.*

73. ASSEMBLY COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF SB 1110, at 5 (June 18, 2008).

74. CAL. COMMISSION ON TEACHER CREDENTIALING, LEGISLATION CONCEPTS FOR COMMISSION CONSIDERATION 6A-3 (2007), available at <http://www.ctc.ca.gov/commission/agendas/2007-12/2007-12-6A.pdf> (on file with the *McGeorge Law Review*).

75. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1110, at 4 (Apr. 16, 2008).

76. ASSEMBLY COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF SB 1110, at 5 (June 18, 2008).

reinstatement of a credential that has been revoked, as opposed to suspended, is much more burdensome on the educator.⁷⁷ After a credential has been revoked, petitioning the CTC at a hearing for the reinstatement of a credential shifts the burden of proof to the applicant to demonstrate professional fitness, refute the revocation, and “prove satisfactory completion of sentencing, probation, or rehabilitation.”⁷⁸

Portions of Chapter 578 also invoke concerns about procedural due process.⁷⁹ The U.S. Constitution prohibits state actors from “depriv[ing] any person of life, liberty, or property, without due process of law.”⁸⁰ Chapter 578 requires an immediate adverse action on an educator’s credential when it is discovered that the educator’s out-of-state credential has been revoked.⁸¹ A credential, which allows for employment in public schools, is “property” under the Constitution that would be entitled to Constitutional protections.⁸² However, temporarily suspending a credential does not automatically deprive an educator of continued employment.⁸³ For instance, an educator whose credential is temporarily suspended is still considered an “employee” who is entitled to Constitutional due process requirements before the credential can be terminated.⁸⁴ In this sense, a suspension without a hearing may not necessarily violate due process.⁸⁵

B. Chapter 578 in Relation to the AP Investigation

While investigating public schools throughout the nation, the AP found a “deeply entrenched resistance toward recognizing and fighting abuse.”⁸⁶ According to the AP investigation, there is a lack of cohesion among states with regard to sharing information about educator discipline.⁸⁷ Although some states require mere allegations of sexual misconduct to be reported to a state licensing board, there is often “no consistent enforcement” to ensure that districts comply with these requirements.⁸⁸ The AP investigation also discovered that many situations involving sexual misconduct by educators are never formally reported, allowing educators to roam from district to district and state to state, which has

77. *Id.*

78. *Id.* The CTA’s opposition is consistent with the findings in the AP investigation, which found that one reason districts may be reluctant to take a disciplinary action on a credential is opposition from a “strong [teacher’s] union.” Irvine & Tanner, *supra* note 1, at 19.

79. *Shields v. Poway*, 63 Cal. App. 4th 955, 957-59, 74 Cal. Rptr. 2d 391, 393-94 (4th Dist. 1998).

80. U.S. CONST. amend. XIV, § 1.

81. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1110, at 3 (Apr. 16, 2008).

82. *See Shields*, 63 Cal. App. 4th at 958, 74 Cal. Rptr. 2d at 393 (describing how the holder of a California teaching credential has a “property interest in continued employment”).

83. *Id.*

84. *Id.* at 963, 74 Cal. Rptr. 2d at 396.

85. *Id.*

86. Irvine & Tanner, *supra* note 1, at 18.

87. *Id.* at 19.

88. *Id.*

been deemed “passing the trash” or “mobile molester[s].”⁸⁹ One of the major problems in California’s system is the often vague description of why an educator was disciplined.⁹⁰

There are several underlying concerns that prevent a stronger, more centralized system of educator misconduct.⁹¹ One reason for a lack of a cohesive national policy and lawmakers’ hesitancy in creating tougher punishments for educators is the “fear of disparaging a vital profession.”⁹² When districts allow an educator to leave quietly, it is often for fear of potential lawsuits or facing opposition from a teacher’s union.⁹³ The vagueness of California’s descriptions of certain types of disciplinary actions protects the educator’s privacy.⁹⁴

While Chapter 578 appears to address the issue of creating tougher punishments, its utility depends on criminal convictions or out-of-state credential revocations that have been formally reported.⁹⁵ One of the problems identified in the AP investigation was the lack of formal reporting of sexual misconduct allegations and the prevalence of allowing educators to “leave quietly” rather than receive an adverse action on their credential.⁹⁶ Despite the safeguards provided by Chapter 578, these types of educators may still slip through the cracks because there may be no record of any criminal convictions or adverse actions on their credentials.⁹⁷

V. CONCLUSION

The reluctance of lawmakers and school districts to create and consistently enforce disciplinary procedures regarding educator misconduct relates to concerns such as privacy, lawsuits, and fear of discouraging a vital profession.⁹⁸ While Chapter 578’s effectiveness may depend on formal reporting of criminal charges or misconduct, it still aims to correct specific problems identified in the AP investigation.⁹⁹ It removes educators from the classroom who have a higher risk of exposing students to sexual misconduct, rather than allowing them to

89. *Id.* at 18.

90. Williams, *supra* note 42, at 19.

91. See Irvine & Tanner, *supra* note 1 (explaining why the national system of educator discipline lacks cohesion); Williams, *supra* note 42, at 19 (describing educator discipline enforcement problems specific to California).

92. Irvine & Tanner, *supra* note 1, at 18.

93. *Id.* at 18-19.

94. Williams, *supra* note 42, at 19.

95. See CTC Bill Information, *supra* note 65 (explaining how the CTC receives notice of out-of-state credential revocation or criminal convictions).

96. Irvine & Tanner, *supra* note 1, at 18.

97. See *generally id.* (explaining the reluctance of many school districts to formally report allegations of misconduct).

98. *Id.*

99. See CTC Bill Information, *supra* note 65 (explaining how SB 1110 will close loopholes found in the Associated Press investigation that are unique to California).

remain in the classroom during a discretionary review by the Committee.¹⁰⁰ By addressing the most recently publicized issues relating to educator misconduct, Chapter 578 balances the interests of educators with growing concerns about student safety.¹⁰¹

100. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1110, at 1-3 (Apr. 16, 2008).

101. *Id.* at 3.