

**STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW**

AGENCY: CALIFORNIA COMMISSION)
ON TEACHER)
CREDENTIALING)

DECISION OF DISAPPROVAL
OF REGULATORY ACTION
(Gov. Code, sec. 11349.3)

ACTION: Amend section 80049 and)
repeal sections 80632, 80632.1, 80632.2,)
80632.3, 80632.4, and 80632.5, of title 5)
of the California Code of Regulations)

OAL File No. 04-1005-04 S

DECISION SUMMARY

This regulatory action proposes to repeal the general requirements for approval of professional preparation programs at California institutions of higher education designed to prepare candidates for the Services Credential with a Specialization in Pupil Personnel Services (school counselors, school social workers, school psychologists, and school child welfare and attendance providers), as well as amend the standards for candidates who complete a comparable professional preparation program at an institution of higher education outside California. The California Commission on Teacher Credentialing (Commission) submitted this regulatory action to the Office of Administrative Law (OAL) on October 5, 2004. On November 18, 2004, OAL notified the Commission that the regulations were disapproved because the regulations failed to comply with the Clarity standard contained in Government Code section 11349.1, and the rulemaking record did not contain a summary and adequate response to each comment received regarding the proposed regulatory action.

DISCUSSION

Any regulatory action a state agency adopts through the exercise of quasi-legislative power delegated to the agency by statute is subject to the requirements of the Administrative Procedure Act (APA) unless a statute expressly exempts or excludes the act from compliance with the APA. (Gov. Code, sec. 11346.) Regulations adopted by the Commission dealing with credentialing must be adopted pursuant to the APA. No exemption or exclusion applies to the regulatory action under review. Thus, before the instant regulatory action may become effective, it is subject to a review by OAL for compliance with procedural requirements and substantive standards of the APA. (Gov. Code, sec. 11349.1(a).)

OAL reserves the right to review the proposed regulations and rulemaking record, upon resubmission by the Commission, for compliance with each legal standard of the APA:

Authority, Reference, Clarity, Consistency, Necessity, and Nonduplication, in addition to the procedural requirements of the APA.

CLARITY

In adopting the APA, the Legislature found that the language of many regulations was unclear and confusing to the persons who must comply with the regulations. (Gov. Code, sec. 11340(b).) For this reason, subdivision (a)(3) of Government Code section 11349.1 requires that OAL review all regulations for compliance with the Clarity standard. Government Code section 11349, subdivision (c), defines “Clarity” as meaning “. . . written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.” Section 16, subdivision (a)(2), of title 1 of the California Code of Regulations (CCR) further provides:

“(a) A regulation shall be presumed not to comply with the ‘clarity’ standard if any of the following conditions exists:

(1)

(2) the language of the regulation conflicts with the agency’s description of the effect of the regulation”

The Commission's notice of proposed regulatory action contains the following Informative Digest:

"Summary of Existing Laws and Regulations

Education Code section 44252 and section 44266 establish the minimum requirements and the general authorizations for the Pupil Personnel Services Credentials. Sections 80049, 80632, 80632.1, 80632.2, 80632.3, 80632.4, and 80632.5 of Title 5 provide the specific requirements and authorizations for these credentials.

"Policy Statement Overview

After hearing from the California Legislature through several initiatives, the California Commission on Teacher Credentialing appointed a 25-member advisory panel to make recommendations concerning the most appropriate competencies for pupil personnel service (PPS) providers. After two years of data collection and other collaborative efforts, the advisory panel developed recommendations that were adopted by the Commission. From those efforts, California colleges and universities will be provided

direction through these regulations as they develop course work and field experiences in their professional preparation programs for school counselors, school psychologists, school social workers and child welfare and attendance providers. In each of these credential areas, the national norms were recommended. [Cal. Reg. Notice Register 2003, No. 42-Z, p. 1631; emphasis added.]"

In the rulemaking record for this regulatory action, the Commission's Initial Statement of Reasons states:

"Purpose and Rationale for Proposed Regulations

"In recent years, several significant policy initiatives by the California Legislature have had important implications for the preparation and certification of Pupil Personnel Services (PPS) Credential candidates, which include school counselors, school psychologists, school social workers, and child welfare and attendance providers. Last year, the Commission incorporated these initiatives into its PPS Credential standards. The revision of the existing Title 5 Regulations is a final and necessary step for the Commission to codify its policies that relate to the preparation of the PPS Credential candidates.

"Amendment of Section 80049

"This section describes specific requirements for professional clear service credentials with a specialization in Pupil Personnel Services. The primary reason for changing the requirements for pupil personnel service providers is to update the requirements so the training received by these professionals will be current and relevant to the times. In recent years the State Legislature has directed the Commission to act on a number of policy issues that are directly related to the work of school counselors, school psychologists, school social workers, and child welfare and attendance providers. The Commission responded to these initiatives by appointing an advisory panel of PPS providers, parents, students and administrators to make recommendations on requirement changes needed. The Commission adopted the panel's recommendations that reflect the national norms and is now proposing that these changes be made in Title 5 Regulations.

". . . .

"Deletion of Sections 80632, 80632.1, 80632.2 80632.3, 80632.4, and 80632.5

"In response to each of the legislative initiatives . . . , the Commission has taken

Decision of Disapproval of Regulatory Action
California Commission on Teacher Credentialing
OAL file no. 04-1005-04 S

significant steps toward implementation of the initiatives, primarily through the development and adoption of the new PPS Credential Standards that are addressed in the proposed regulation. The above mentioned sections are no longer necessary for the implementation of the new standards. [Emphasis added.]"

The Commission proposes to amend section 80049, subdivision (c), which establishes the minimum requirements for candidates who complete a post baccalaureate professional preparation program at an institution of higher education outside California. The proposed amendments establish the minimum standards that a non-California professional preparation program must include in order to be comparable to a professional preparation program in California. Section 80049, subdivision (b), sets forth the minimum requirements for applicants who complete a professional preparation program in California. No changes were proposed to subdivision (b). The rulemaking record does not indicate that the amendments to section 80049(c) govern only applicants who complete a professional preparation program outside California. In fact, the rulemaking record states that ". . . California colleges and universities will be provided direction through these regulations as they develop course work and field experiences in their professional preparation programs" (Notice of Proposed Rulemaking, p. 1; emphasis added.) Additionally, the rulemaking record provides that "The primary reason for changing the requirements for pupil personnel service providers is to update the requirements so the training received by these professionals will be current and relevant to the times." (Initial Statement of Reasons, p. 1.) The rulemaking record does not state that the updates are only to the requirements that apply to applicants who completed a professional preparation program outside California. Thus, the proposed amendments to section 80049 conflict with the Commission's description of the effect of section 80049 as amended.

The Commission also proposes to repeal sections 80632, 80632.1, 80632.2, 80632.3, 80632.4, and 80632.5, which establish the general requirements for approval of professional preparation programs at California institutions of higher education designed to prepare candidates for the Services Credential with a Specialization in Pupil Personnel Services for school counselors, school social workers, school psychologists, and school child welfare and attendance providers.

In the rulemaking record, the Commission states that it is revising its regulations in title 5 of the CCR to codify its policy of adopting the advisory panel's recommendations that reflect the national norms for preparation of the PPS Credential candidates. The Commission further states that it is adopting "the new PPS Credential Standards that are addressed in the proposed regulation [, and therefore, the] . . . above mentioned sections are no longer necessary for the implementation of the new standards." (Initial Statement of Reasons, p. 2.)

The proposed repeal of sections 80632, 80632.1, 80632.2, 80632.3, 80632.4, and 80632.5

Decision of Disapproval of Regulatory Action
California Commission on Teacher Credentialing
OAL file no. 04-1005-04 S

conflicts with the Commission's description of the effect of repealing these sections. California colleges and universities will not be provided direction as they develop course work and field experiences in their professional preparation programs if these sections are repealed. The national norms, adopted by the Commission as its policy, are not addressed or implemented in the proposed regulations.

Moreover, to implement the new standards and make them legally enforceable, the new national standards are required to be adopted pursuant to the APA. Government Code section 11340.5, subdivision (a), specifically prohibits a state agency from issuing, utilizing, or enforcing any guideline, criteria, or standard of general application, which is a regulation as defined in Government Code section 11342.600, unless the guideline, criteria, or standard of general application is adopted pursuant to the APA.

The rulemaking record makes it clear that the Commission has already adopted the national norms, though not in accordance with the APA, as the general requirements for approval of professional preparation programs at California institutions of higher education designed to prepare candidates for the Services Credential with a Specialization in Pupil Personnel Services. These national norms, which are standards of general application, are required to be adopted pursuant to the APA in order to be legally enforceable unless there is an express statutory exemption.

OAL is required to review every regulation adopted by a state agency pursuant to the APA to determine whether the regulation complies with the "consistency" standard. "Consistency" means being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law." (Gov. Code, sec. 11349(d).)

Repealing sections 80632, 80632.1, 80632.2, 80632.3, 80632.4, and 80632.5, without also adopting the national standards pursuant to the APA, would be in conflict with or contradictory to Government Code section 11340.5, and thus, would violate the Consistency standard. Upon resubmitting the regulatory action, the Commission must ensure that the proposed regulations meet the Consistency standard, as well as the other substantive standards and procedural requirements of the APA.

FAILURE TO SUMMARIZE AND RESPOND

Government Code section 11346.9, subdivision (a)(3), requires each agency to include in the Final Statement of Reasons of the rulemaking record, "A summary of each objection or recommendation made regarding the specific adoption, amendment, or repeal proposed, together

Decision of Disapproval of Regulatory Action
California Commission on Teacher Credentialing
OAL file no. 04-1005-04 S

with an explanation of how the proposed action has been changed to accommodate each objection or recommendation, or the reasons for making no changes. This requirement applies only to objections or recommendations specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the action. . . ."

The rulemaking record did not contain a summary or response to the written comment submitted by Robert D. Hansen of the University of La Verne. The Commission's response to the written comment submitted by Professor Charles Hanson of California State University, Northridge, was inadequate. Professor Hanson suggested that section 80049(c)(3)(A) include 100 clock hours of practica. The Commission responded by stating that the 100 clock hours of practica was "included". Section 80049(c)(3)(A) does not include 100 clock hours of practica.

CONCLUSION

For the reasons discussed above, OAL disapproved the regulatory action proposed by the Commission dealing with specific requirements and authorizations for Pupil Personnel Services Credentials because it did not comply with the Clarity standard and failed to adequately summarize and respond to each comment made regarding the proposed action. If you have any questions, please do not hesitate to contact me at (916) 323-6831.

DATE: November 29, 2004


DEBRA M. CORNEZ
Senior Counsel

for: WILLIAM L. GAUSEWITZ
Director

Original: Sam W. Swofford, Ed.D., Executive Director

cc: Lawrence H. Madkins, Jr., Chair
California Commission on Teacher Credentialing
Dr. Joseph Dear