



Attorney General's Quarterly Report

Legal Services Provided to the Commission on Teacher Credentialing

February 28, 2019

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Attorney General's Quarterly Report on Legal Services Provided to the Commission on Teacher Credentialing

The Office of the Attorney General submits this second quarterly report for Fiscal Year 2018-19 as required by the Budget Act of 2018, Item 6360-001-0407, Provision 7—For Support of Commission on Teacher Credentialing, payable from the Teacher Credentials Fund.

EXECUTIVE SUMMARY

This quarterly report provides information required under Provision 7 for the period October 1 through December 31, 2018, concerning the caseload for the Commission on Teacher Credentialing. As we did in previous reports, in addition to the information required under Provision 7, we have provided the number of active adverse action cases – those which have not yet been adjudicated – as well as the total number of adverse action and judicial review cases at the Office of the Attorney General.¹

The appendix to this report includes an aggregate summary for Fiscal Year 2017-18 based on the first four quarterly reports (page 12). This summary shows that the Office of the Attorney General received 129 new discipline referrals from the commission during that year and resolved 182 cases, reducing the caseload by 53, from 313 to 260. During the first half of Fiscal Year 2018-19, the caseload was further reduced by 47 discipline cases, bringing the remaining balance to 213.

In addition to a one-page summary for Fiscal Year 2017-18 and separate summaries for the current and previous quarter, the appendix includes Provision 7 reporting requirements and an overview of the adjudication process for the commission's cases.

¹ The Office of the Attorney General represents the commission in three categories of litigation: (1) adverse action administrative cases, (2) judicial review of adverse action decisions, and (3) general litigation unrelated to adverse actions. For more detail, see the summary of the adjudication process in the appendix.

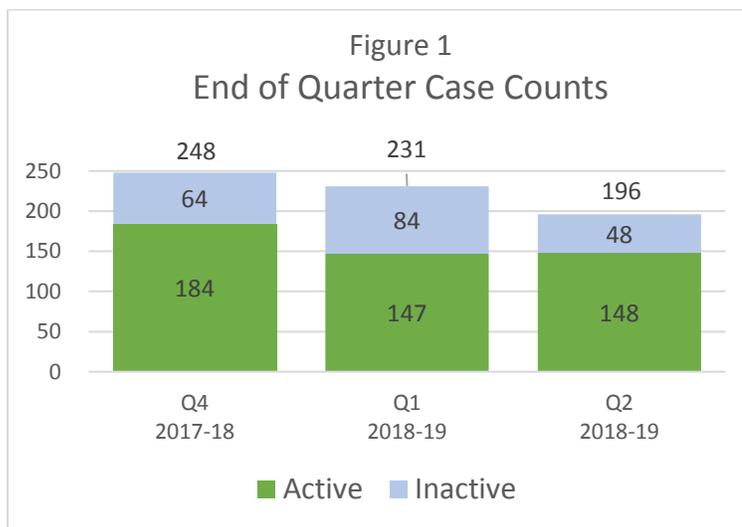
DISCUSSION

Volume [Provision 7, Subdivisions (b)(1) and (b)(5)]

As discussed in this report, discipline cases are of two types – adverse action cases to revoke, suspend or deny a credential, and judicial review of adverse action decisions.

Adverse Action Cases

The Licensing Section of the Office of the Attorney General assumed responsibility for 282 Commission on Teacher Credentialing cases on July 1, 2016 (“inherited backlog”). We began quarterly reporting one year later. The adverse action case counts for the most recent three quarters are summarized in Figure 1 below.



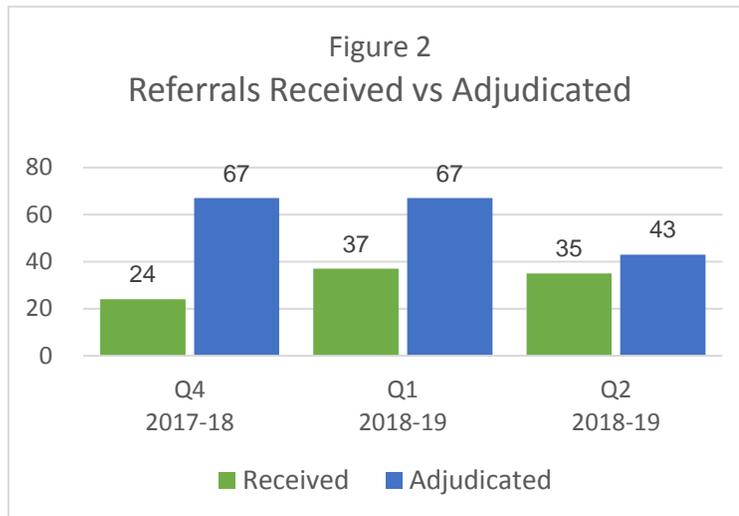
At the end of this second quarter of Fiscal Year 2018-19 (Q2), there were 196 open adverse action cases at the Office of the Attorney General. Open adverse action cases can be divided into those that have not yet been adjudicated (active), and those that have been (inactive).² An inactive case cannot be closed until the Commission on Teacher Credentialing delivers its decision and the decision becomes effective. At that time, a case is considered resolved and may be closed.

During our first reporting year, Fiscal Year 2017-18, we adjudicated more cases than we received each quarter, reducing the inherited backlog. That year ended with 184 active adverse action cases. In the first half of the second reporting year, Fiscal Year 2018-19, the active adverse action caseload was further reduced by 36 cases, from 184 to 148. This level is close to the active adverse action caseload at the end of the previous quarter, which was 147.

² Counting active cases more closely approximates the way the commission counts cases pending at the Attorney General’s Office, as regularly published in its reports.

Referrals Received and Adjudicated

In this second quarter of Fiscal Year 2018-19, the Office of the Attorney General received 35 adverse action referrals and adjudicated 43. Figure 2 below summarizes referrals received and adjudicated during the most recent three quarters.



Judicial Review

If a respondent wishes to challenge the commission's decision, they can request judicial review in superior court. This creates a separate case.³

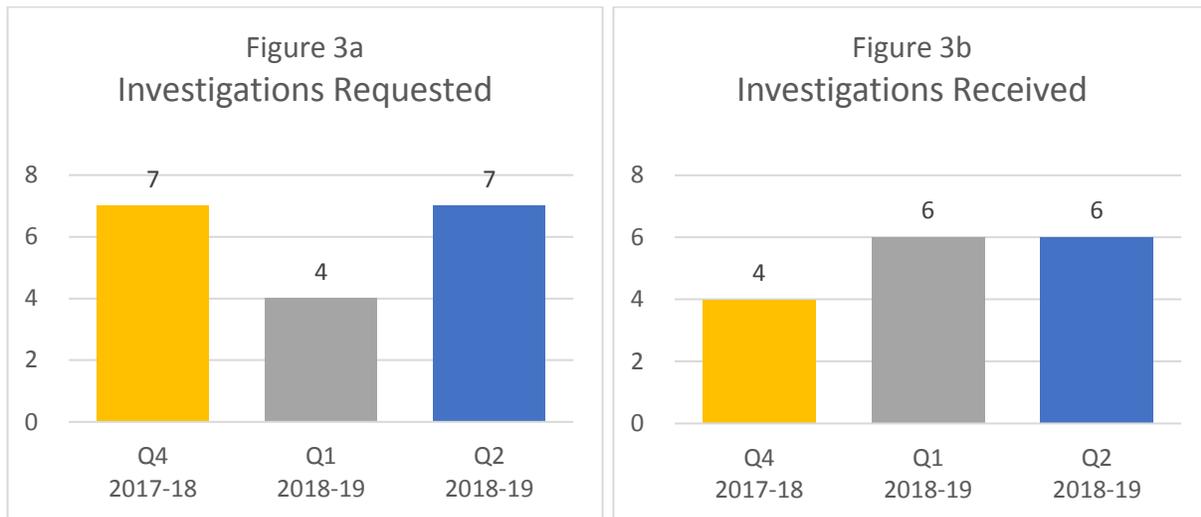
We started this quarter with 16 judicial review cases pending. Three additional cases were referred to the Office of the Attorney General and two were resolved, leaving 17 judicial review cases. The number of judicial review cases has increased over the past year and a half because of the large number of adverse action cases that have been resolved in this period. A small percentage of litigants seek superior court review of the commission's administrative adverse action decisions. Although the percentage of decisions reviewed is small, the higher number of decisions issued has generated more judicial review cases.

³ A detailed summary of the adjudication process is provided in the appendix.

Further Investigations [Provision 7, Subdivisions (b)(2) and (b)(3)]

When evidence in a case is not sufficient to sustain our burden of proof to impose discipline, the assigned deputy attorney general will request further investigation. Figures 3a and 3b below display the number of further investigation requests and the number of investigations received in response to such requests during the most recent three quarters, in cases where pleadings had not yet been filed.⁴

Seven requests for further investigation were made this quarter, compared with four last quarter. Six completed investigations were received, the same number as last quarter.



Adjudications [Provision 7, Subdivision (b)(4)]

In the second quarter of Fiscal Year 2018-19, 43 adverse action cases were adjudicated in an average of 634 days, similar to the first quarter average of 619 days. Adjudicated adverse action cases this quarter included some with extreme values at both ends of the spectrum. The quickest adjudication this quarter was completed in 43 days, and the slowest took 1,785 days.

In the summary for this quarter on page 10, we have included the minimum, maximum and median number of days for adjudication of cases in addition to the mean (average). Because the mean is more sensitive to outliers than the median, the median can be a better measure of central tendency when extreme values are present. The median this quarter was 429 days, 64 fewer days than the median in the first quarter, which was 493.

⁴ Deputy attorneys general are also assisted by the commission's investigators with additional investigation *after* pleadings are filed. These quarterly reports do not include data about investigations conducted after a pleading is filed. The commission collects more comprehensive data about its investigations and should be consulted for greater detail.

Figures 4a and 4b below show the numbers of adverse action cases adjudicated and the median number of days from referral to adjudication for the past three quarters.

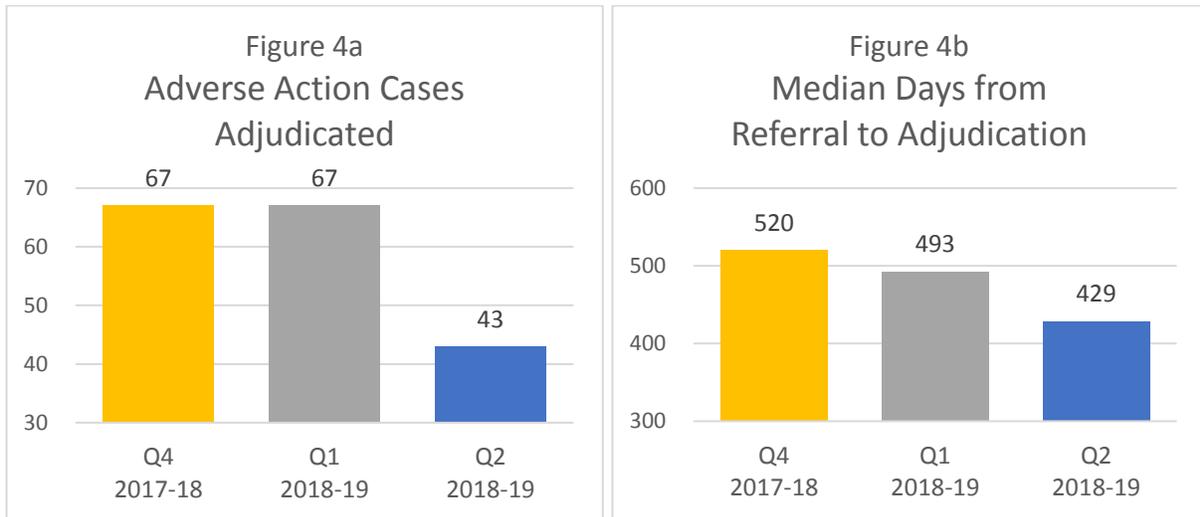
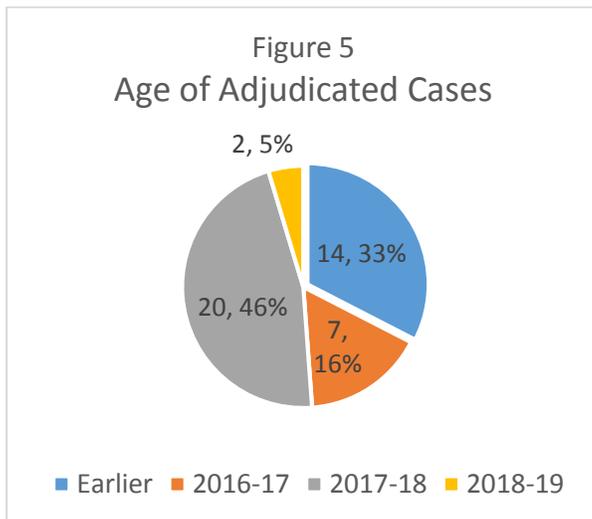
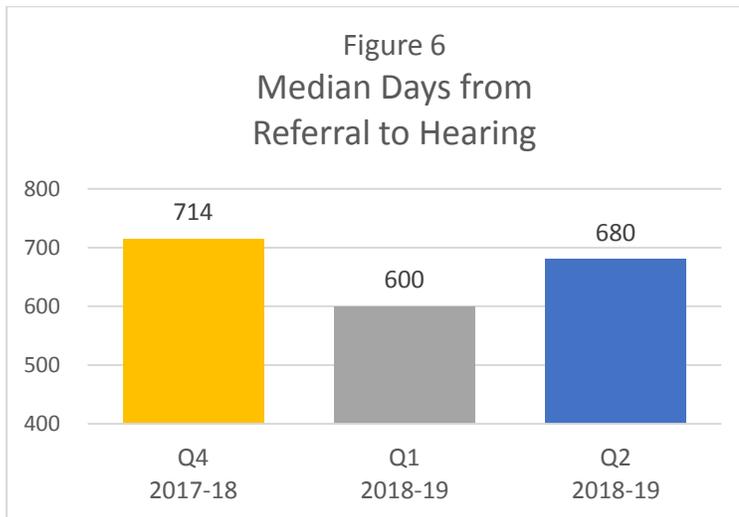


Figure 5 below indicates the age of the 43 adverse action cases that were adjudicated during the quarter – 14 were transferred to the Licensing Section on July 1, 2016 (oldest); 7 were received in FY 2016-17; 20 were received in FY 2017-18; and 2 were received this fiscal year. Our goal is to eliminate the oldest cases, while continuing to aggressively adjudicate new cases.



Hearings [Provision 7, Subdivision (b)(6)]

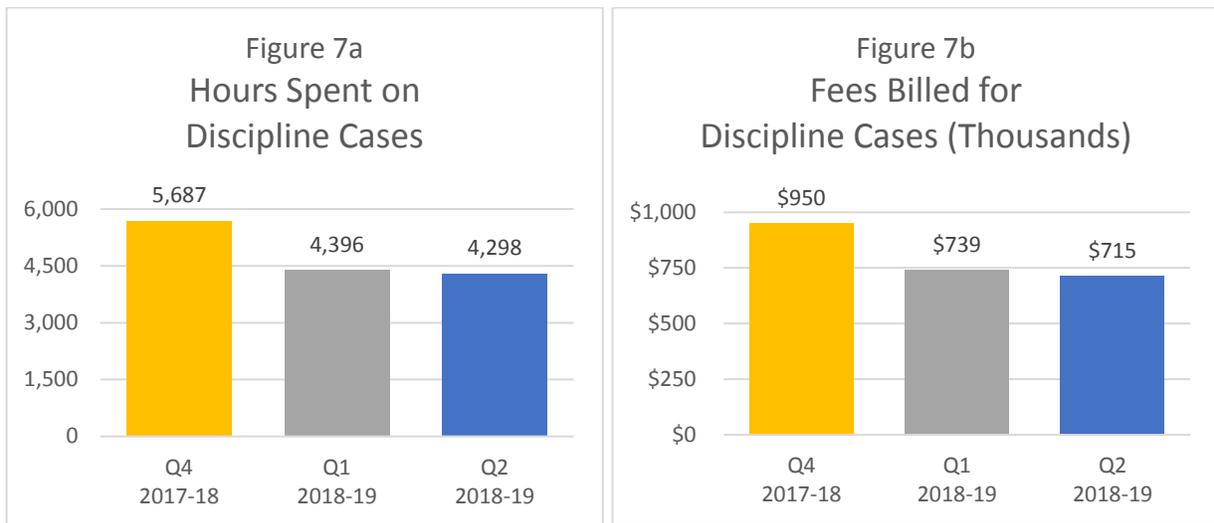
In this second quarter of Fiscal Year 2018-19, 12 hearings commenced, approximately the same number of hearings commenced last quarter. The shortest time from receipt of the adverse action referral until the hearing commenced this quarter was 243 days and the maximum was 1,784 days. The median of 680 days this quarter was 80 days higher than last quarter, when the median was 600 days.



Quarterly Hours and Fees [Provision 7, Subdivision (d)]

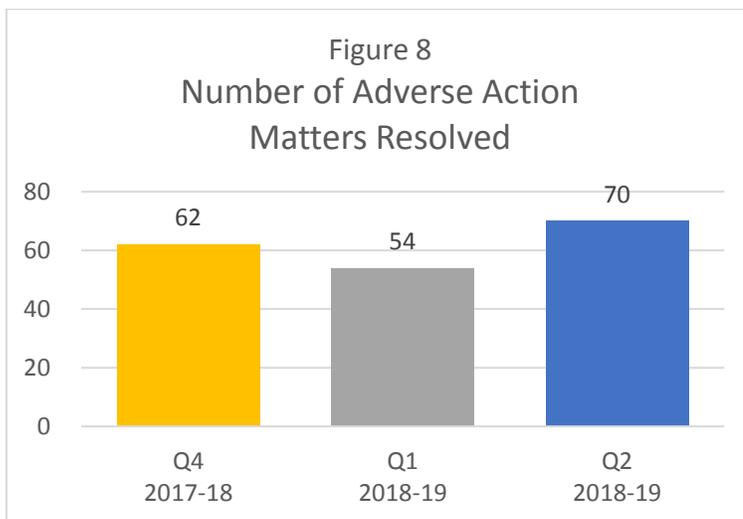
In the second quarter of Fiscal Year 2018-19, the Attorney General's staff performed 4,298 hours of legal work related to teacher discipline, including both adverse action and judicial review cases. The Office of the Attorney General billed a total of \$714,526 to the commission related to the teacher discipline caseload. As the inventory of pending adverse action cases declines, less work is required for those cases. However, the number of judicial review cases has increased. The net result is that the total hours worked in the second quarter for all discipline cases was about the same as in the first quarter.

Total hours and fees for the Fiscal Year 2017-18 were 18,602 and \$3,089,148. Figures 7a and 7b below summarize hours and fees for this and two previous quarters.



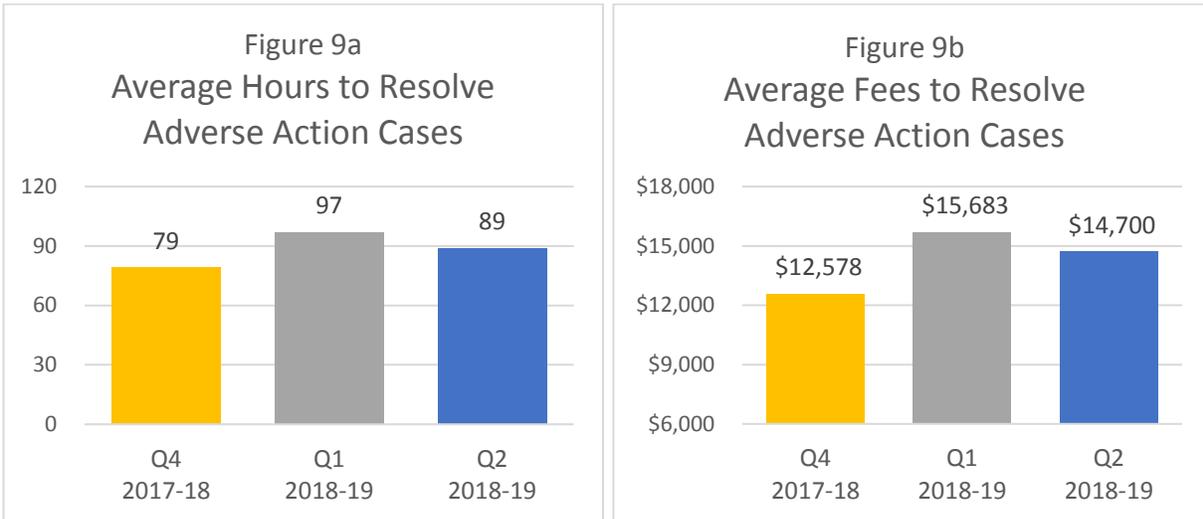
Average Hours and Fees [Provision 7, Subdivision (c)]

As shown in Figure 8 below, 70 adverse action matters were resolved⁵ this quarter, which is above the pace at which the commission made decisions to resolve cases during the previous year, which was an average of 44 cases per quarter.



⁵ Resolution is when the effective date of the commission’s final decision has arrived; the case can then be closed. Resolved cases are no longer considered to be at the Office of the Attorney General.

In this reporting quarter, it took an average of 89 hours to resolve adverse action matters, compared with 97 hours last quarter. Comparing the same information in terms of fees, average fees to adjudicate matters this quarter were \$14,710, a decrease of \$973 compared with the previous quarter. Figures 9a and 9b below show comparisons by quarter.



CONCLUSION

This quarterly report provides information regarding the volume, time for adjudication, and funding for the legal work performed by the Office of the Attorney General for the Commission on Teacher Credentialing. We will continue to provide representation for the commission that conforms to the highest standards of the Office of the Attorney General.

This report is also available on the Attorney General's website at:

<http://oag.ca.gov/publications>

If you have questions regarding this report or would like additional information, please contact Sirat Attapit, Director of Legislative Affairs, at sirat.attapit@doj.ca.gov or 916-210-6192.

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FY 2018-19 Quarter Two – Published February 28, 2019

Discipline Cases at the Office of the Attorney General Provision 7, subdivisions (b)(1) and (b)(5)			
Total Referrals, Active and Inactive	Adverse Action	Judicial Review	Total
Referrals start of quarter, subdivision (b)(1)	231	16	247
Referrals received during the quarter	35	3	38
Referrals resolved during the quarter	70	2	72
Referrals end of the quarter, subdivision (b)(5)	196	17	213

Further Investigation Requested and Received Provision 7, subdivisions (b)(2) and (b)(3)	
Further investigation requests, subdivision (b)(2)	7
Supplemental investigations received, subdivision (b)(3)	6

Adverse Action Adjudications – Provision 7, subdivision (b)(4)						
Minimum	Maximum	Mean	Goal	Above Goal	Median	Count
43	1,785	634	365	269	429	43

Number of Days from Receipt of Referral to Hearing Commenced Provision 7, subdivision (b)(6)				
Minimum	Maximum	Mean	Median	Count
243	1,784	779	680	12

Hours, Fees and Costs for Adverse Action Cases Provision 7, subdivisions (c)(1), (c)(2) and (c)(3)		
For 70 adverse action cases resolved:	Mean	Median
Hours per case, subdivision (c)(1)	89	72
Fees per case, subdivision (c)(2)	\$ 14,700	\$ 11,990
Costs per case, subdivision (c)(3)	\$ 494	\$ 0

Total Hours and Fees – Discipline and General Litigation Cases Provision 7, subdivisions (d)(1), (d)(2), (d)(3) and (d)(4)		
Type of Case	Total Hours	Total Fees
Discipline cases, subdivisions (d)(1) and (d)(2)	4,298	\$ 714,526
Other cases, subdivisions (d)(3) and (d)(4)	0	\$ 42
All cases combined	4,298	\$ 714,568

FY 2018-19 Quarter One – Published November 30, 2018

Discipline Cases at the Office of the Attorney General Provision 7, subdivisions (b)(1) and (b)(5)			
Total Referrals, Active and Inactive	Adverse Action	Judicial Review	Total
Referrals start of quarter, subdivision (b)(1)	248	12	260
Referrals received during the quarter	37	6	43
Referrals resolved during the quarter	54	2	56
Referrals end of the quarter, subdivision (b)(5)	231	16	247

Further Investigation Requested and Received Provision 7, subdivisions (b)(2) and (b)(3)	
Further investigation requests, subdivision (b)(2)	4
Supplemental investigations received, subdivision (b)(3)	6

Adverse Action Adjudications – Provision 7, subdivision (b)(4)						
Minimum	Maximum	Mean	Goal	Above Goal	Median	Count
14	1,443	619	365	254	493	67

Number of Days from Receipt of Referral to Hearing Commenced Provision 7, subdivision (b)(6)				
Minimum	Maximum	Mean	Median	Count
196	1,390	744	600	14

Hours, Fees and Costs for Adverse Action Cases Provision 7, subdivisions (c)(1), (c)(2) and (c)(3)		
For 54 adverse action cases resolved:	Mean	Median
Hours per case, subdivision (c)(1)	97	62
Fees per case, subdivision (c)(2)	\$15,683	\$10,390
Costs per case, subdivision (c)(3)	\$81	\$0

Total Hours and Fees – Discipline and General Litigation Cases Provision 7, subdivisions (d)(1), (d)(2), (d)(3) and (d)(4)		
Type of Case	Total Hours	Total Fees
Discipline cases, subdivisions (d)(1) and (d)(2)	4,396	\$739,018
Other cases, subdivisions (d)(3) and (d)(4)	148	\$25,160
All cases combined	4,544	\$764,178

FISCAL YEAR 2017-18

Discipline Cases at the Office of the Attorney General Provision 7, subdivisions (b)(1) and (b)(5)			
Total Referrals, Active and Inactive	Adverse Action	Judicial Review	Total
Referrals start of the year, subdivision (b)(1)	304	9	313
Referrals received during the year	119	10	129
Referrals resolved during the year	175	7	182
Referrals end of the year, subdivision (b)(5)	248	12	260

Further Investigation Requested and Received Provision 7, subdivisions (b)(2) and (b)(3)	
Further investigation requests, subdivision (b)(2)	52
Supplemental investigations received, subdivision (b)(3)	44

Adverse Action Adjudications – Provision 7, subdivision (b)(4)						
Minimum	Maximum	Mean	Goal	Above Goal	Median	Count
10	1,966	630	365	265	565	212

Number of Days from Receipt of Referral to Hearing Commenced Provision 7, subdivision (b)(6)				
Minimum	Maximum	Mean	Median	Count
139	1,838	728	683	49

Hours, Fees and Costs for Adverse Action Cases Provision 7, subdivisions (c)(1), (c)(2) and (c)(3)		
For 175 adverse action cases resolved:	Mean	Median
Hours per case, subdivision (c)(1)	84	54
Fees per case, subdivision (c)(2)	\$13,373	\$8,935
Costs per case, subdivision (c)(3)	\$281	\$0

Total Hours and Fees – Discipline and General Litigation Cases Provision 7, subdivisions (d)(1), (d)(2), (d)(3) and (d)(4)		
Type of Case	Total Hours	Total Fees
Discipline cases, subdivisions (d)(1) and (d)(2)	18,602	\$3,089,148
Other cases, subdivisions (d)(3) and (d)(4)	409	\$67,734
All cases combined	19,011	\$3,156,882

Provision 7 Measures Reported

The Budget Act of 2018, Item 6360-001-0407, Provision 7 states:

- (a) The Attorney General shall submit a quarterly report to the chairpersons and vice chairpersons of the budget committees of each house of the Legislature, the Legislative Analyst's Office, and the Department of Finance concerning the status of the teacher misconduct discipline caseload and other cases being handled by the Attorney General for the Commission on Teacher Credentialing. The quarterly report shall be submitted by August 30, November 30, February 28, and May 31, of each year for the previous corresponding fiscal quarter.
- (b) Each report shall include, at a minimum, all of the following for teacher discipline matters:
 - (1) The number of matters with the Attorney General at the beginning of the reporting period.
 - (2) The number of matters for which further investigation was requested by the Attorney General.
 - (3) The number of matters for which further investigation was received by the Attorney General.
 - (4) The number of matters adjudicated by the Attorney General.
 - (5) The number of matters with the Attorney General at the end of the reporting period.
 - (6) The minimum, maximum, and median number of days from the date the Attorney General receives an accusation or statement of issues referral from the commission to the commencement of a hearing at the Office of Administrative Hearings for cases adjudicated during this period.
- (c) To determine the average cost of the Attorney General to adjudicate a case representing the commission, each report shall provide the following information for cases adjudicated in the reporting period specified in paragraph (a):
 - (1) The average and median number of hours worked by the staff of the Attorney General to adjudicate accusation and statement of issues matters.
 - (2) The average and median fees charged by the Attorney General to the commission to adjudicate accusation and statement of issues matters.
 - (3) The average and median litigation costs to adjudicate accusation and statement of issues matters.

- (d) To determine the total activities conducted by the Attorney General to represent the commission for each period, the Attorney General shall report the following:
- (1) The total hours worked during the period by staff of the Attorney General for representation of the commission in teacher discipline matters.
 - (2) The total fees charged during the period by the Attorney General to the commission for representation in teacher discipline matters.
 - (3) The total hours worked during the period by staff of the Attorney General for representation of the commission unrelated to teacher discipline matters.
 - (4) The total fees charged during the period by the Attorney General to the commission for representation unrelated to teacher discipline matters.
- (e) This information shall be provided with the intent that recipients shall be able to determine the caseload input and output of the Attorney General in relation to representation of the commission in teacher discipline cases, especially as it relates to determining the average case processing time for accusation and statement of issues representation and adjudication, and proper funding level for handling the teacher discipline caseload and other legal work for the commission. Staff from the Attorney General shall provide timely followup information to staff from the offices identified in paragraph (a) upon request if further explanation or information is required.

Summary of the Adjudication Process

To provide context for this report, we have included a short primer on the adjudicatory hearing process. The Commission on Teacher Credentialing Committee of Credentials reviews acts or omissions of a credential holder or applicant to determine whether probable cause exists for discipline. If the committee finds probable cause and recommends discipline, the credential holder or applicant has the right to appeal the recommendation, which initiates an adjudicatory hearing under Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code (Administrative Procedure Act). The appeal is referred to the Office of the Attorney General to be prepared for hearing.

The deputy attorney general assigned to the case reviews the evidence supplied by the Commission on Teacher Credentialing to determine its sufficiency to meet the requisite burden of proof. If the evidence is insufficient and circumstances suggest additional avenues for evidentiary development, the deputy may request further investigation from the commission's investigators and the file remains open pending its receipt. When evidence is insufficient and further investigation is not recommended or legal issues prevent prosecution, the Office of the Attorney General declines prosecution and the case is closed.

Based on sufficient evidentiary support, an accusation is prepared to initiate the adjudicatory hearing against a credential holder, or statement of issues to set forth the grounds for denial of an application. The pleading is sent to the Commission on Teacher Credentialing for signature by the executive director, who is the complainant. The pleading is "filed" when the executive director signs it, and it is then returned to the Office of the Attorney General for service on the credential holder or applicant. Once served with an accusation, the credential holder must file a notice of defense within fifteen days or is in default. Once the notice of defense has been received in an accusation case, or the statement of issues has been served in an application denial case, a hearing is scheduled with the Office of Administrative Hearings. Of course, many cases are resolved through settlement before hearing.

The deputy attorney general prosecutes the discipline case before the Office of Administrative Hearings. Upon conclusion of the hearing, the case is submitted to the administrative law judge who presides over the hearing, issues a proposed decision, and sends it to the Commission on Teacher Credentialing for its ultimate decision.

Subdivision (b)(4) of Provision 7 requests the number of cases adjudicated by the Office of the Attorney General. “Adjudicated” means the work of the Office of the Attorney General is complete to bring the case back before the commission for its final decision.⁶ Adjudication can occur in five ways:

1. Withdrawal of request for hearing by respondent. Before a pleading is filed, the credential holder or applicant may withdraw the request for a hearing, thereby accepting the recommendation of the Committee of Credentials. The Commission on Teacher Credentialing then receives the recommendation of the Committee of Credentials for its ultimate decision.
2. Default. If a credential holder does not submit a timely notice of defense, the deputy attorney general prepares a default decision, which is sent to the commission for its ultimate decision.
3. Settlement. The executive director may authorize a consent determination based on terms sufficient to provide for protection of the public, schoolchildren, and the profession, which will be presented to the Committee of Credentials for its recommendation and then to the commission for its ultimate decision.
4. Hearing submitted. Upon completion of the adjudicatory hearing, the case is submitted to the administrative law judge, who prepares a proposed decision and sends it to the Commission on Teacher Credentialing for its ultimate decision.
5. Prosecution declined. Occasionally, the deputy attorney general determines that the evidence is insufficient and does not recommend further investigation, whereby prosecution is declined and the case is closed.

Even after the commission’s decision is issued, it may not be final. The respondent may exercise the right to petition for reconsideration, and if granted by the commission, the decision will be reconsidered. This can also happen if the commission decides a case based on the default of the respondent who fails to file a notice of defense or appear at a duly noticed hearing. The commission can vacate the default decision and additional proceedings are then conducted to ultimately decide the case. Each of these “post-submission” events will lengthen case processing and require further adjudication of the case.

Cases that have been adjudicated remain open at the Office of the Attorney General until the final decision is issued by the commission and the decision becomes effective. This concludes the case, except for any judicial review in superior court and ensuing appeal seeking to overturn the commission’s discipline decision. The commission generally meets six times per year, during which discipline cases are considered and final decisions made. Therefore, it usually takes two or three months after adjudication before final resolution of a discipline case. The diagram below outlines the adjudication process.

⁶ When prosecution is declined, the case is not submitted to the commission for decision, and is closed.

Flowchart – Adjudication Process

