



## **Attorney General's Quarterly Report**

### **Legal Services Provided to the Commission on Teacher Credentialing**

**November 30, 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 first quarter report for Fiscal Year 2019-20 as required by the Budget Act of 2019, Item 6360-001-0407, Provision 6—For Support of Commission on Teacher Credentialing, payable from the Teacher Credentials Fund.

## EXECUTIVE SUMMARY

This quarterly report provides information required under Provision 6 for the period July 1 through September 30, 2019, concerning the caseload for the Commission on Teacher Credentialing. The Office of the Attorney General began reporting in Fiscal Year 2017-18; this is the ninth quarterly report.

In addition to the required quarterly data, this report provides the number of *active* adverse action cases – those that 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.<sup>1</sup> As discussed and defined in this report, there were 152 adverse action cases at the beginning of this quarter and 176 at the end, with 49 new adverse action cases received and 25 resolved. The number of new referrals received was higher than in any previous quarter and as discussed in the report, exceeding the average quarterly referral rate in Fiscal Year 2018-19 by 14 referrals. In comparison to the previous quarter and as discussed in the report, the number of *active* adverse action cases increased from 126 to 150. Judicial review cases increased from 10 to 14.

The average age of adverse action cases continues to decrease. As shown in Figures 4a and 4b on page 5, 65 percent of the adverse action cases adjudicated this quarter were received in Fiscal Year 2018-19; 35 percent were received earlier. With respect to the remaining 150 active adverse action cases, at the end of the quarter 86 percent were received in Fiscal Year 2018-19 or later; 14 percent were received earlier.

- The *average age* of remaining active adverse action cases at the end of the quarter was 265 days, compared with 487 days one year ago (a 46% reduction).
- Similarly, the *average number of days* to adjudicate adverse action cases has gone down from 619 to 334 days over the same period (also a 46% reduction).

The appendix on pages 8-16 includes aggregate summaries for Fiscal Years 2017-18 and 2018-19, a summary for the current quarter, Provision 6 reporting requirements, and a summary of the adjudication process for the commission's cases.

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<sup>1</sup> 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 of Cases** [Provision 6, Subdivisions (b)(1) and (b)(5)]

Adverse action and judicial review cases comprise the discipline caseload at the Office of the Attorney General. *Adverse action* refers to the administrative disciplinary proceeding to deny, revoke or suspend a credential. This requires filing an initial pleading and litigating the matter through administrative hearing for the commission's ultimate issuance of a final decision. Our focus in representing the commission in adverse action cases is on protecting the public. *Judicial review* includes mandamus proceedings in superior court to review administrative decisions issued by the commission, or other civil actions brought against the commission in connection with decisions it has issued. At the end of the current quarter, 176 adverse action cases and 14 judicial review cases remained at the Office of the Attorney General. All data for the quarter is summarized in the appendix on page 9.

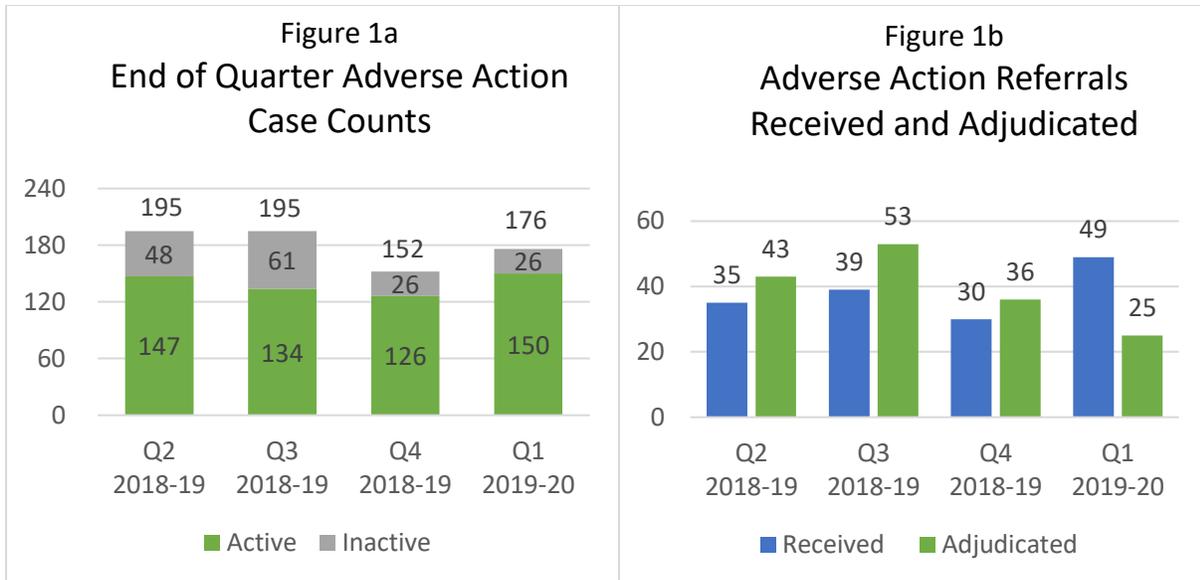
### ***Adverse Action Cases***

Adverse action cases are further broken down between those that have not yet been adjudicated (active), and those that have been (inactive).<sup>2</sup> *Adjudicated* means the work of the Office of the Attorney General is complete and the case goes before the commission for its final decision. Adverse action cases are *resolved* when the commission has issued its final decision and it has become effective.

The adverse action case counts at the end of each of the four most recent quarters are summarized in Figure 1a on page 3. At the end of the quarter, 150 active and 26 inactive cases comprised the 176 remaining adverse action cases. We received a historically high number of referrals during this quarter, and at the same time had a historically low number of adverse action cases resolved, resulting in a net increase of 24 cases by the end of the quarter. While the commission met twice during the quarter, during which decisions are made to resolve cases, the second meeting was held at the end of September; it is therefore likely that some cases decided at that meeting will have resolution dates that fall into the next quarter. Figure 1b summarizes the number of adverse action referrals received and adjudicated during the same four quarters. It shows that during this reporting quarter the Office of the Attorney General received 49 adverse action referrals and adjudicated 25.

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<sup>2</sup> Counting active cases more closely approximates the way the commission counts cases pending at the Office of the Attorney General, as regularly published in its reports.



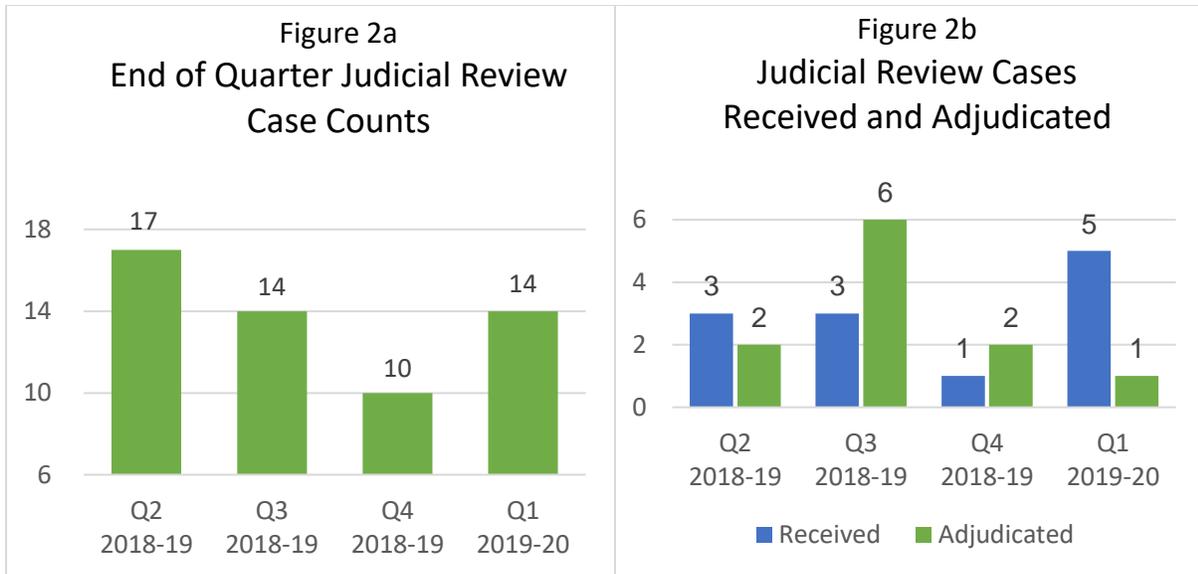
### ***Judicial Review Cases***

If a respondent wishes to challenge the commission’s decision, they can petition for judicial review in superior court.<sup>3</sup> When this happens, a new judicial review case is opened.<sup>4</sup> Since this office began reporting, the number of judicial review cases increased, corresponding to an increase in adverse action cases adjudicated and decisions issued by the commission. While only a small percentage of litigants seek superior court review of the commission’s adverse action decisions, a higher number of decisions issued results in more judicial review cases. The Commission on Teacher Credentialing has a higher rate of judicial review cases than any other client represented by the Licensing Section. We believe the absence of disciplinary guidelines is the main reason that judicial review occurs with a higher frequency with respect to the commission’s cases.

Figure 2a on page 4 shows that at the end of the quarter, 14 judicial review cases were pending at the Office of the Attorney General. Figure 2b shows the number of new judicial review cases received and adjudicated for the most recent four quarters. Five judicial review cases were referred to the Office of the Attorney General this quarter, an unusually large quarterly number, compared to 10 received in the four quarters of the first year of reporting and 13 received in the second year.

<sup>3</sup> Sometimes a civil lawsuit is filed against the commission instead of a mandamus proceeding.

<sup>4</sup> A detailed summary of the adjudication process is provided in the appendix.



**Further Investigations** [Provision 6, 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. Seven requests for further investigation were made this quarter and three completed investigations were received.

**Adjudications** [Provision 6, Subdivision (b)(4)]

In the current reporting quarter, 27 adverse action cases were adjudicated and the median (midpoint) duration between referral and adjudication was 295 days.<sup>5</sup> For the second quarter in a row, average days for adjudication came in below our goal of 365 days. The quickest adjudication this quarter was completed in 13 days, and the slowest took 1,128 days. Figures 3 and 4 on page 5 show the progress in reducing the age of the adverse action caseload, both in the average number of days to adjudicate cases, and the average age of the remaining caseload. Comparing the age of the caseload at the end of this quarter with a year ago, the average age has decreased by 222 days, from 487 to 265 days.

<sup>5</sup> The median is less distorted by outliers than the average (mean).

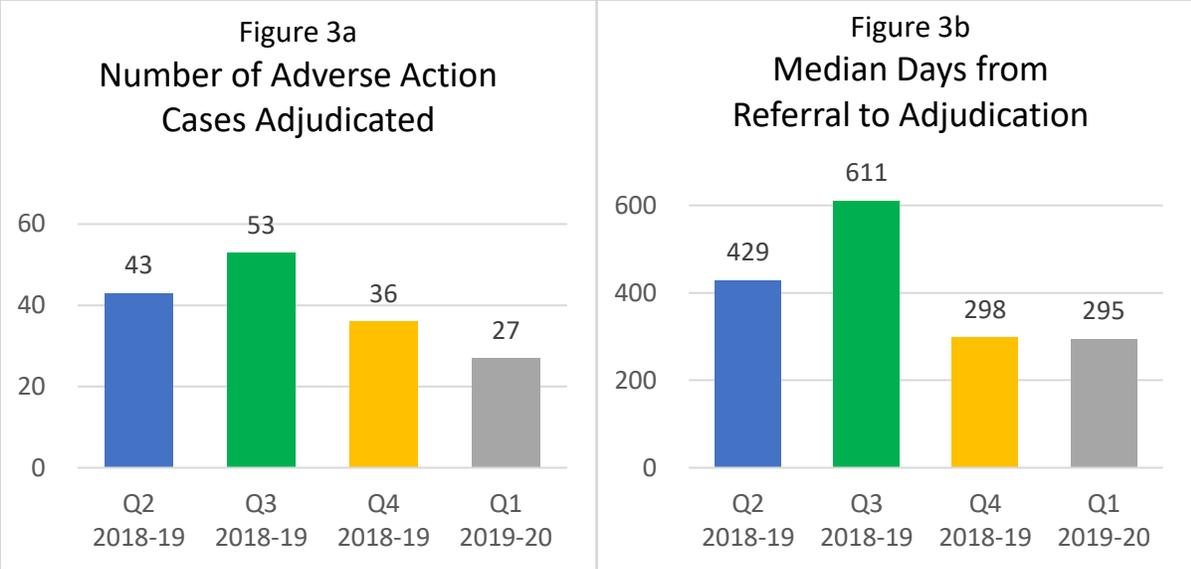
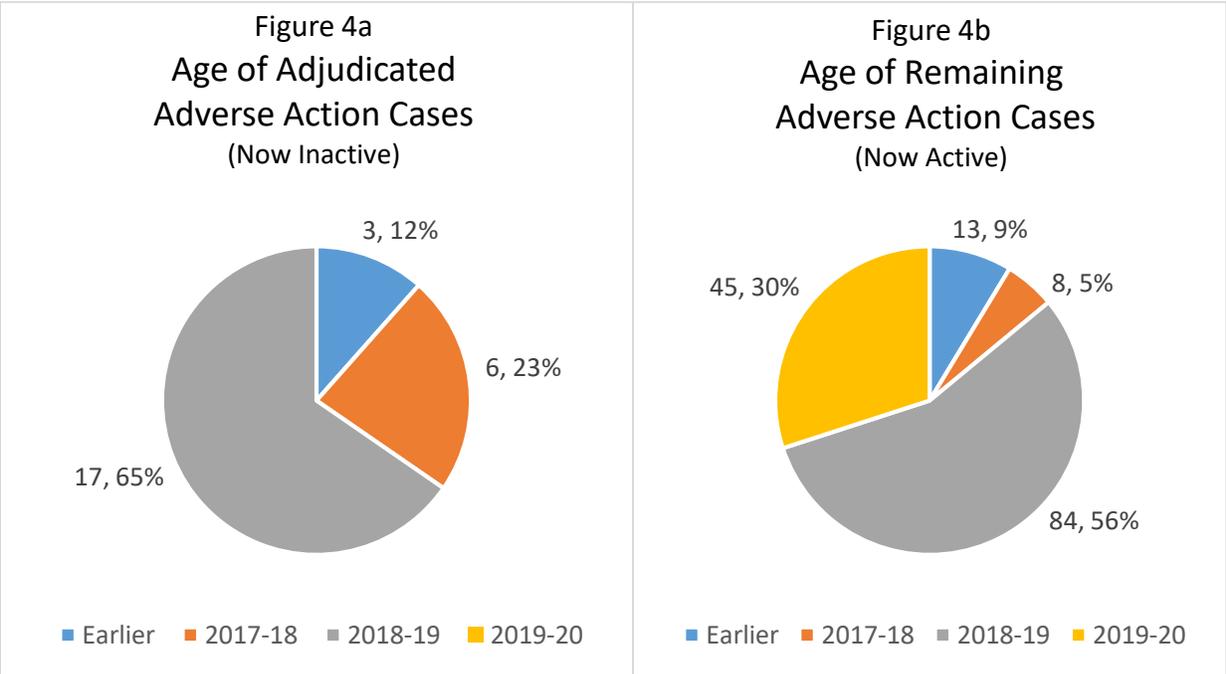


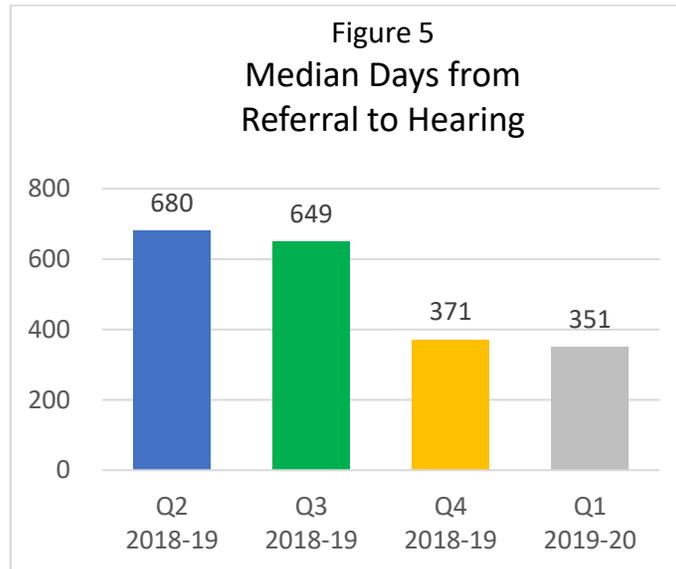
Figure 4a displays the age of the 26 adverse action cases that were adjudicated during the first quarter of Fiscal Year 2019-20. Seventeen of the cases adjudicated were received in Fiscal Year 2018-19; nine were received earlier.

Figure 4b shows the age of the remaining adverse action caseload at the end of the quarter. Of the 150 active adverse action cases, 84 were received in Fiscal Year 2018-19 and 45 were received this quarter. Only 21 cases were received prior to Fiscal Year 2018-19. Our work continues to shift to more recent cases as older cases are resolved and eliminated from the caseload.



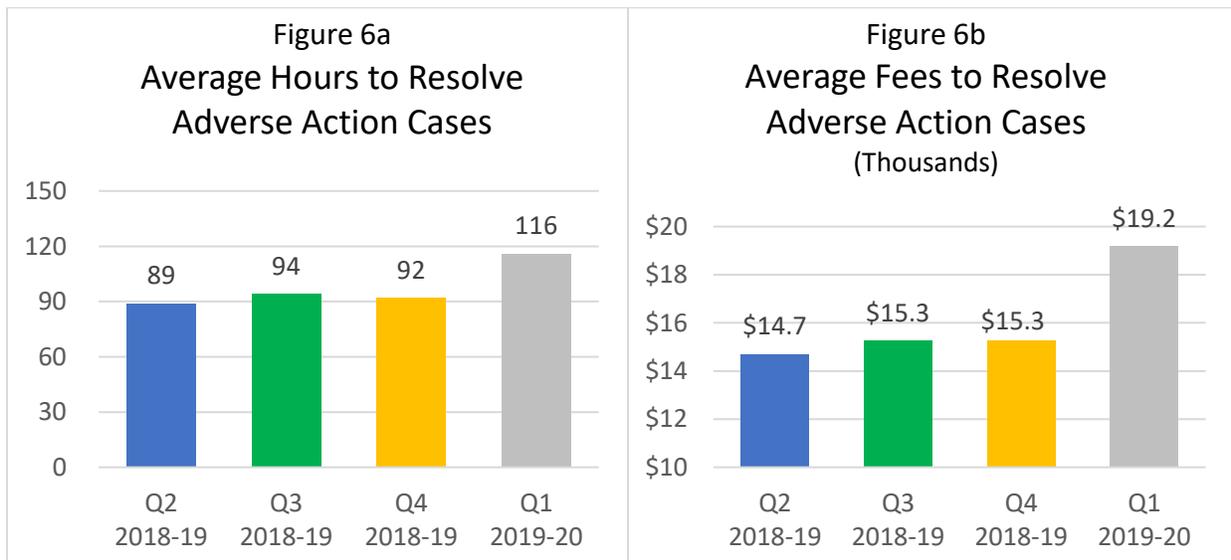
## Hearings [Provision 6, Subdivision (b)(6)]

Five hearings commenced in the first quarter of Fiscal Year 2019-20. The median time to commence hearings was 351 days. Figure 5 displays the median number of days from receipt of referral to hearing for the most recent four quarters.



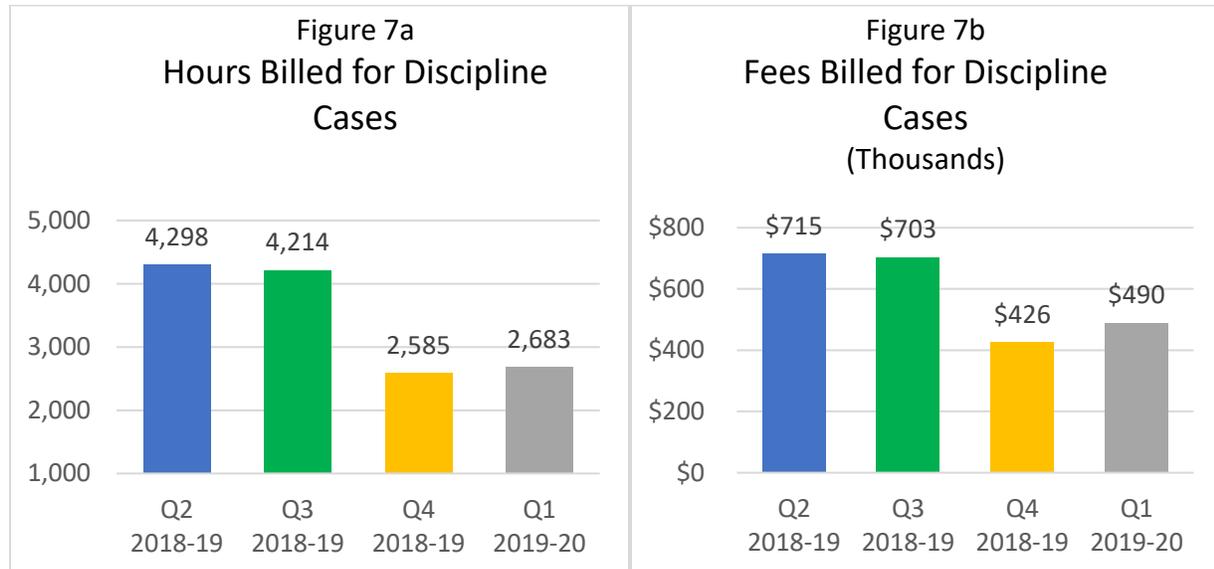
## Average Hours and Fees [Provision 6, Subdivision (c)]

In this reporting quarter, an average of 116 hours were required to resolve adverse action cases. Comparing the same information in terms of fees, average fees to adjudicate matters this quarter were \$19,186. Fee increases effective September 1, 2019, are reflected in Average Fees for the first quarter of Fiscal Year 2019-20. Figures 6a and 6b below show comparisons for the most recent four quarters.



## Quarterly Hours and Fees [Provision 6, Subdivision (d)]

In the first quarter of Fiscal Year 2019-20, the Attorney General's staff provided 2,683 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 \$489,617 to the commission related to the teacher discipline caseload. We expect the number of hours of quarterly work to remain fairly consistent at this point, unless the referral rate increases as it did this quarter. Figures 7a and 7b below summarize hours and fees for the most recent four quarters.



## CONCLUSION

This quarterly report provides information regarding the volume, time for adjudication, and cost 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:

<https://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](mailto:sirat.attapit@doj.ca.gov) or 916-210-6192.

## APPENDIX

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**FY 2019-20 Quarter One – Published November 30, 2019**

<b>Discipline Cases at the Office of the Attorney General Provision 6, subdivisions (b)(1) and (b)(5)</b>			
Total Referrals, Active and Inactive	Adverse Action	Judicial Review	Total
Referrals start of quarter, subdivision (b)(1)	152	10	162
Referrals received during the quarter	49	5	54
Referrals resolved during the quarter	25	1	26
Referrals end of the quarter, subdivision (b)(5)	176	14	190

\*One referral previously entered in error was deleted.

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

<b>Number of Days for Adverse Action Adjudications Provision 6, subdivision (b)(4)</b>						
Minimum	Maximum	Mean	Goal	Above Goal	Median	Count
13	1,128	334	365	(31)	295	27

<b>Number of Days from Receipt of Referral to Hearing Commenced Provision 6, subdivision (b)(6)</b>				
Minimum	Maximum	Mean	Median	Count
161	785	418	351	5

<b>Hours, Fees and Costs for Adverse Action Cases Provision 6, subdivisions (c)(1), (c)(2) and (c)(3)</b>		
For 25 adverse action cases resolved:	Mean	Median
Hours per case, subdivision (c)(1)	116	72
Fees per case, subdivision (c)(2)	\$ 19,186	\$ 12,161
Costs per case, subdivision (c)(3)	\$ 538	\$ 0

<b>Total Hours and Fees – Discipline and General Litigation Cases Provision 6, subdivisions (d)(1), (d)(2), (d)(3) and (d)(4)</b>		
Type of Case	Total Hours	Total Fees
Discipline cases, subdivisions (d)(1) and (d)(2)	2,683	\$ 489,617
Other cases, subdivisions (d)(3) and (d)(4)	20	\$ 4,238
All cases combined	2,703	\$ 493,855

**FISCAL YEAR 2018-19**

<b>Discipline Cases at the Office of the Attorney General Provision 7, subdivisions (b)(1) and (b)(5)</b>			
Total Referrals, Active and Inactive	Adverse Action	Judicial Review	Total
Referrals start of the year, subdivision (b)(1)	247	12	259
Referrals received during the year	141	13	154
Referrals resolved during the year	236	15	251
Referrals end of the year, subdivision (b)(5)	152	10	162

<b>Further Investigation Requested and Received Provision 7, subdivisions (b)(2) and (b)(3)</b>	
Further investigation requests, subdivision (b)(2)	21
Supplemental investigations received, subdivision (b)(3)	24

<b>Number of Days for Adverse Action Adjudications Provision 7, subdivision (b)(4)</b>						
Minimum	Maximum	Mean	Goal	Above Goal	Median	Count
14	1,904	593	365	228	442	199

<b>Number of Days from Receipt of Referral to Hearing Commenced Provision 7, subdivision (b)(6)</b>				
Minimum	Maximum	Mean	Median	Count
89	1,784	732	595	45

<b>Hours, Fees and Costs for Adverse Action Cases Provision 7, subdivisions (c)(1), (c)(2) and (c)(3)</b>		
For 236 adverse action cases resolved:	Mean	Median
Hours per case, subdivision (c)(1)	90	64
Fees per case, subdivision (c)(2)	\$ 14,734	\$ 10,600
Costs per case, subdivision (c)(3)	\$ 312	\$ 0

<b>Total Hours and Fees – Discipline and General Litigation Cases Provision 7, subdivisions (d)(1), (d)(2), (d)(3) and (d)(4)</b>		
Type of Case	Total Hours	Total Fees
Discipline cases, subdivisions (d)(1) and (d)(2)	15,493	\$ 2,582,818
Other cases, subdivisions (d)(3) and (d)(4)	150	\$ 25,542
All cases combined	15,643	\$ 2,608,360

**FISCAL YEAR 2017-18**

<b>Discipline Cases at the Office of the Attorney General Provision 7, subdivisions (b)(1) and (b)(5)</b>			
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	118	10	128
Referrals resolved during the year	175	7	182
Referrals end of the year, subdivision (b)(5)	247	12	259

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

<b>Number of Days for Adverse Action Adjudications Provision 7, subdivision (b)(4)</b>						
Minimum	Maximum	Mean	Goal	Above Goal	Median	Count
10	1,966	630	365	265	565	212

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

<b>Hours, Fees and Costs for Adverse Action Cases Provision 7, subdivisions (c)(1), (c)(2) and (c)(3)</b>		
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

<b>Total Hours and Fees – Discipline and General Litigation Cases Provision 7, subdivisions (d)(1), (d)(2), (d)(3) and (d)(4)</b>		
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 6 Measures Reported

The Budget Act of 2019, Item 6360-001-0407, Provision 6 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**

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 when 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. 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 final decision.

Subdivision (b)(4) of Provision 6 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.<sup>6</sup> Adjudication can occur in five ways:

1. 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.
2. 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.
3. 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 final decision.
4. 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 final decision.
5. 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 final decision.

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 is 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 time 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. It can therefore take two to three months after adjudication before final resolution of a discipline case. The following diagram outlines the adjudication process.

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

## Flowchart – Adjudication Process

