



Attorney General's Quarterly Report

Legal Services Provided to the Commission on Teacher Credentialing

November 30, 2020

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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 2020-21 as required by the Budget Act of 2020, 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 of July 1 through September 30, 2020, concerning the caseload for the Commission on Teacher Credentialing.¹ The Office of the Attorney General began reporting in Fiscal Year 2017-18; this is the thirteenth quarterly report.

The goal of the Office of the Attorney General since its first quarterly report has been to eliminate the backlog of active (unadjudicated) adverse action cases, and to adjudicate cases, on average, within one year. The Office of the Attorney General has largely eliminated the backlog and now adjudicates most cases within one year. Additionally, this quarter shows:

- The median number of days from referral to adjudication has remained at or below 323 for the past four quarters (Figure 3b).
- Ninety-six percent of the 124 active adverse action cases remaining at the end of the current quarter were received in Fiscal Year 2018-19 or later, with only five more complicated cases received earlier (Figure 4b).
- Average hours and fees to resolve cases for the past four quarters remain relatively constant (Figures 6a and 6b).
- In the first quarter of Fiscal Year 2020-21, the Attorney General's staff provided 3,112 hours of legal work related to teacher discipline (Figure 7a).

The appendices to this report include summaries of all required metrics for the first quarter of Fiscal Year 2020-21, annual summaries for three previous fiscal years, Provision 6 reporting requirements, and a summary of the adjudication process for the commission's cases.

¹ This quarterly report's information is provided against the backdrop of the COVID-19 pandemic.

DISCUSSION

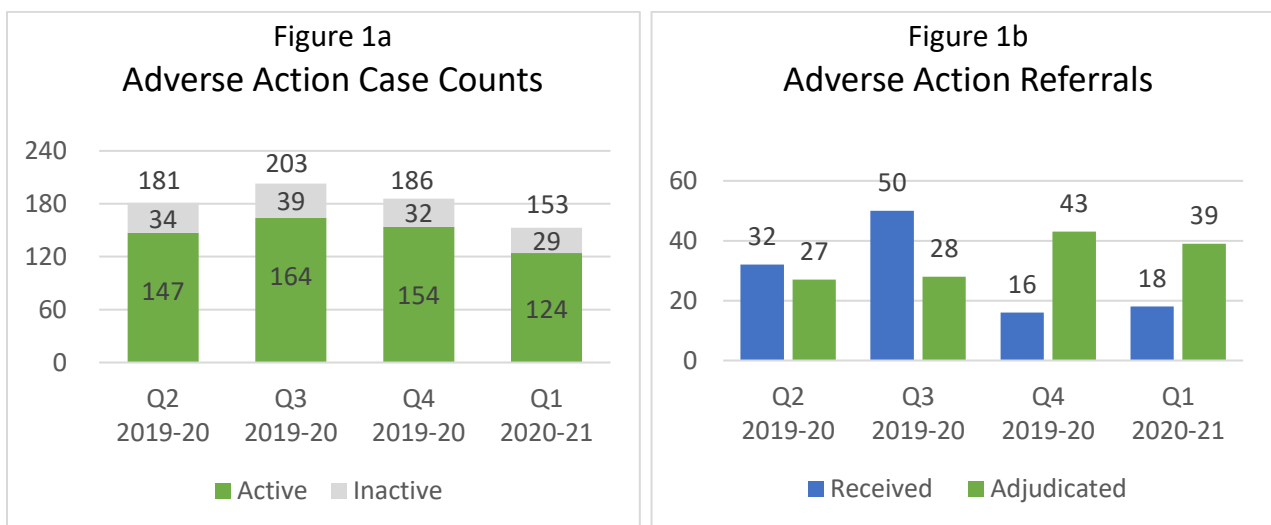
Volume of Cases [Provision 6, Subdivisions (b)(1) and (b)(5)]

Protection of the public is the Office of the Attorney General’s primary goal in representing the commission. Together, adverse action and judicial review cases comprise the discipline caseload reported herein. *Adverse actions* are the administrative disciplinary proceedings filed to deny, revoke, or suspend a credential. The action begins by filing a pleading and litigating it through an administrative hearing, prior to the commission’s issuance of a final decision. *Judicial review* includes mandamus proceedings in superior court to review the commission’s administrative decisions, or other civil actions against the commission related to the decisions it has issued. At the end of the current quarter, 153 adverse action cases and 12 judicial review cases remained at the Office of the Attorney General. All data for this quarter are summarized in Appendix A .

Adverse Action Cases

Adverse action cases include those not yet adjudicated (active), and those that have been adjudicated (inactive).² *Adjudicated* means the work of the Office of the Attorney General is complete and the case goes to the commission for its final decision. An adverse action case is *resolved* when the commission’s final decision becomes effective. For a summary of the adjudication process see Appendix F.

Figure 1a depicts adverse action case counts for the past four quarters. At the end of the current quarter, there remain 124 active and 29 inactive cases, a net decrease of 33 total adverse action cases from the previous quarter. Figure 1b depicts the number of adverse action referrals received and adjudicated for the past four quarters. It shows that during the current quarter, the Office of the Attorney General received 18 adverse action referrals and adjudicated 39.

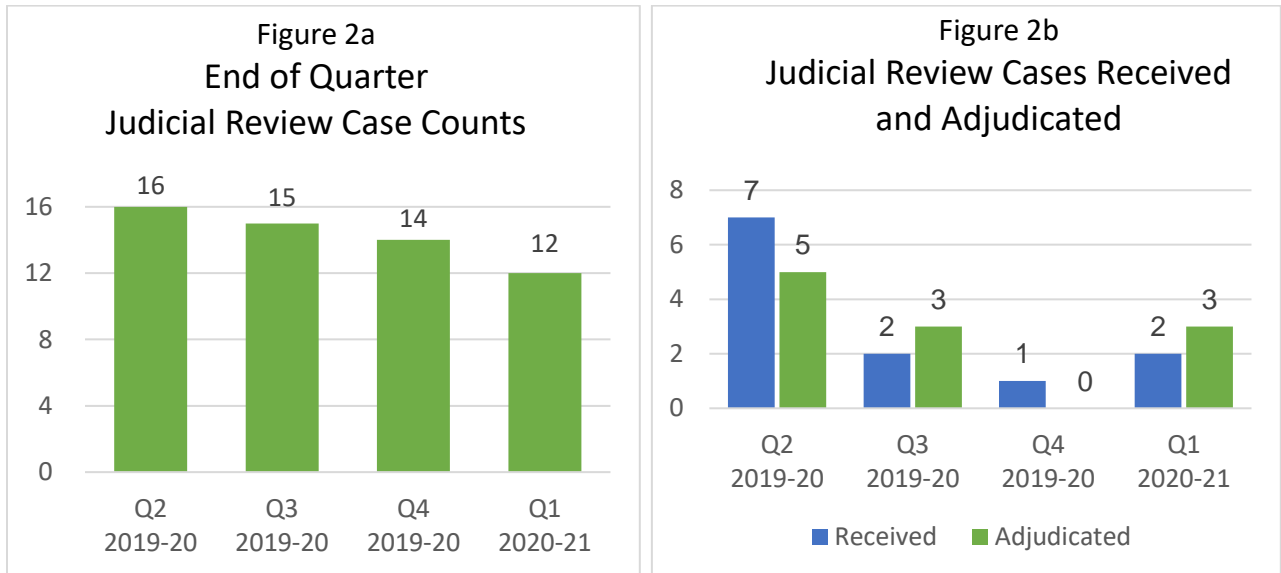


² Counting active cases more closely approximates the way the commission counts cases pending at the Office of the Attorney General, as regularly published in its reports.

Judicial Review Cases

A new judicial review case is opened when a respondent seeks to challenge the commission’s decision and petitions for judicial review in superior court.³ At the end of the current quarter, 12 judicial review cases were pending at the Office of the Attorney General (Figure 2a). Since the Office of the Attorney General began reporting in Fiscal Year 2017-18, the number of judicial review cases has increased, corresponding to an increase in adverse action cases adjudicated and decisions issued by the Commission. While few litigants seek review of the commission’s adverse action decisions, the issuance of more decisions naturally results in more judicial review cases.

Figure 2b illustrates the number of judicial review cases received and adjudicated during the most recent four quarters. During the current quarter, two judicial review cases were referred to the Office of the Attorney General and three were adjudicated.



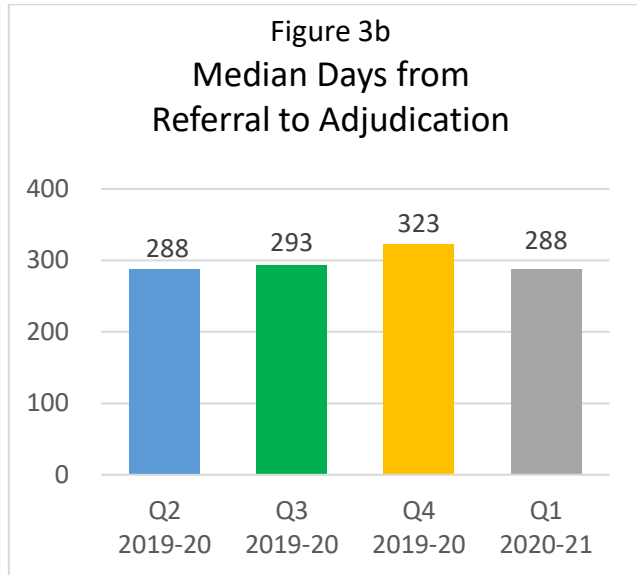
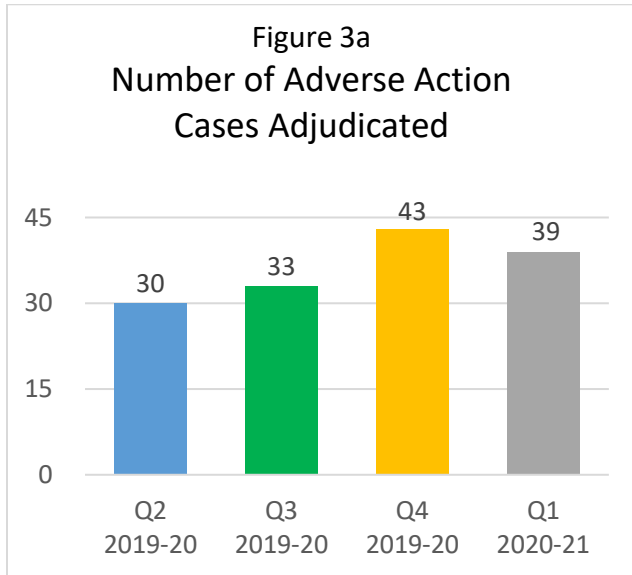
Further Investigations [Provision 6, Subdivisions (b)(2) and (b)(3)]

When evidence in a case is insufficient to sustain the necessary burden of proof to impose discipline, the assigned deputy attorney general may request further investigation. Four requests for further investigation were made this quarter and four supplemental investigations were received (Appendix A).

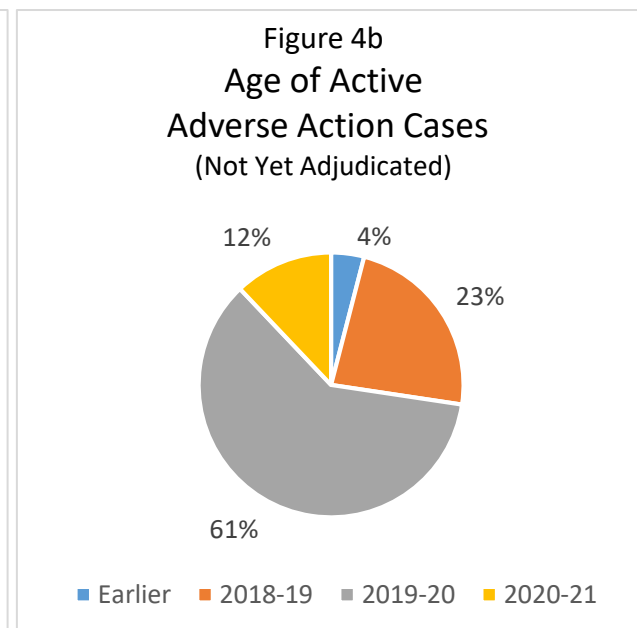
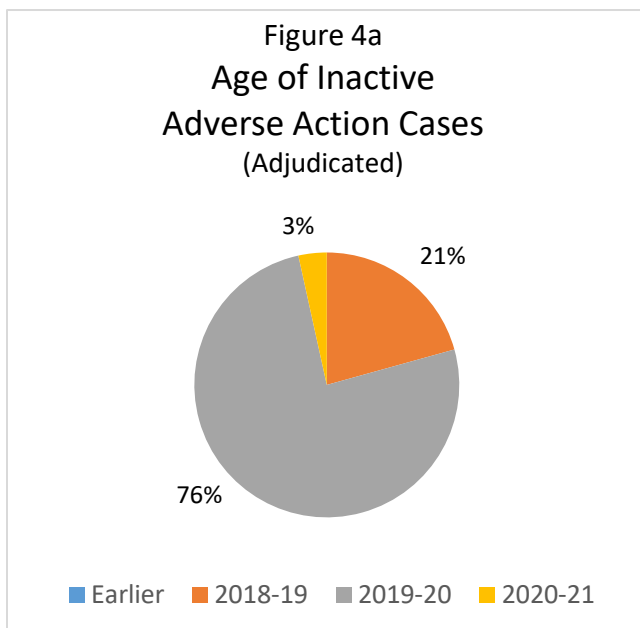
³ Sometimes a civil lawsuit is filed against the commission instead of a mandamus proceeding.

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

In the current reporting quarter, 39 adverse action cases were adjudicated. The average number of days for adjudication was 296. The quickest adjudication this quarter was completed in 42 days and the longest in 651 days. Figures 3a and 3b show that both the number of cases adjudicated and the median days to adjudicate cases decreased this quarter.

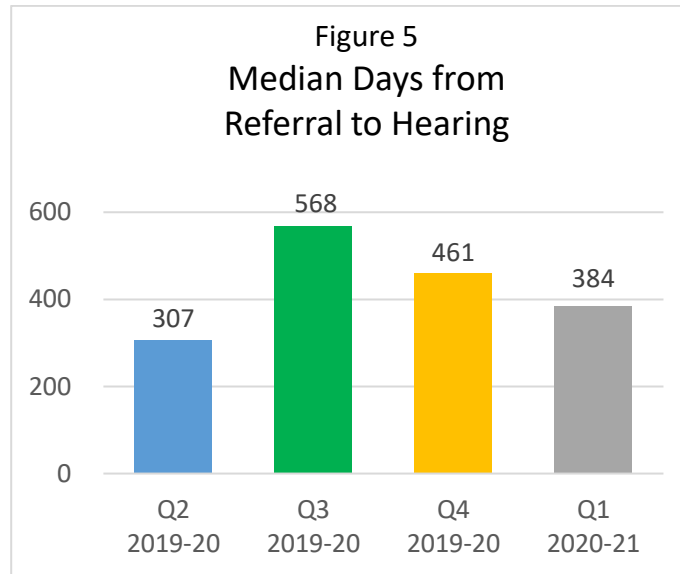


Figures 4a and 4b display the age of adverse action cases at the end of the current quarter (see Figure 1a, above). All twenty-nine inactive cases were received in Fiscal Year 2018-19 or later. One hundred nineteen of 124 active adverse action cases were received in Fiscal Year 2018-19 or later; only five (4%), were received earlier.



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

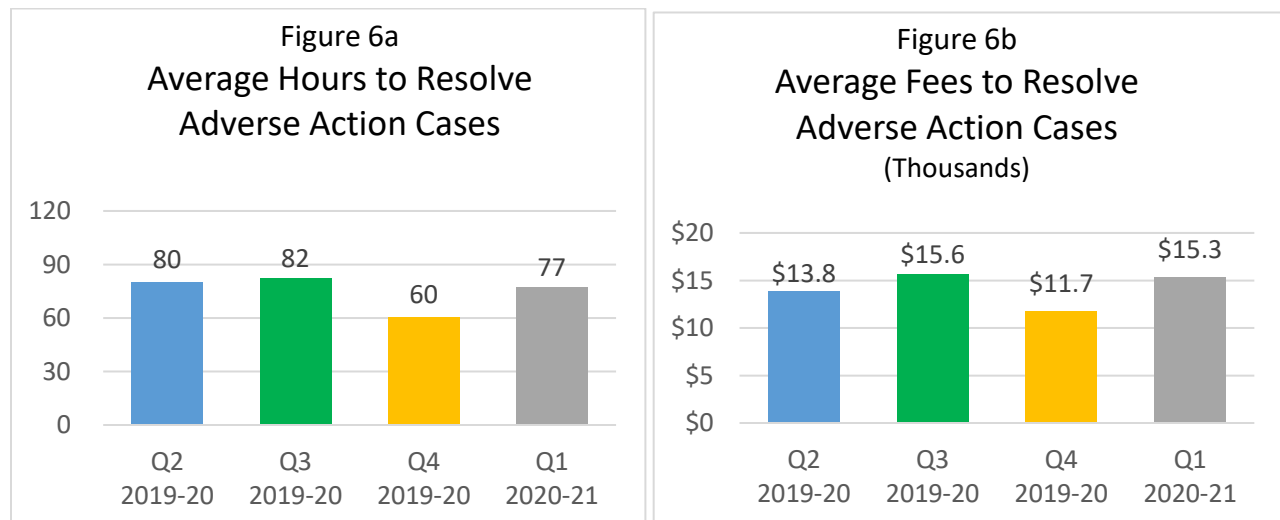
Figure 5 displays the median number of days from receipt of referral to hearing for the most recent four quarters.



Six hearings commenced this current quarter, with a median time to commence hearings of 384 days, a decrease from last quarter.

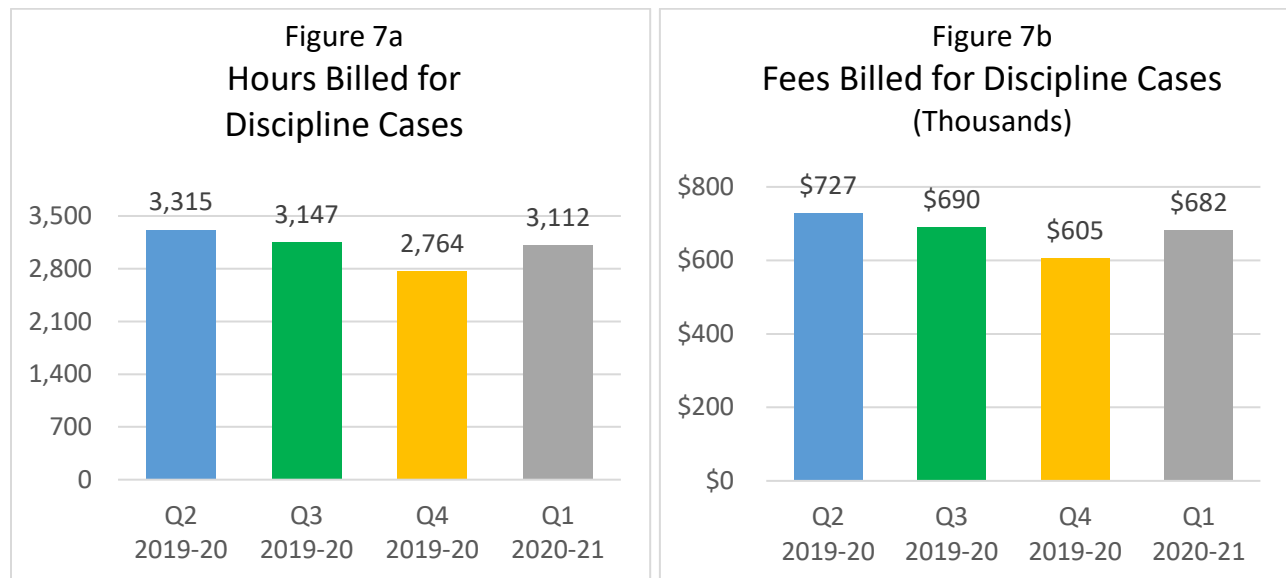
Average Hours and Fees [Provision 6, Subdivision (c)]

In the current quarter, an average of 77 hours were required to resolve adverse action cases and the average fees to adjudicate matters was \$15,328. Figures 6a and 6b below show a stabilization over the most recent four quarters.



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

In the first quarter of this fiscal year, the Attorney General's staff provided 3,112 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 \$681,635 to the commission related to the teacher discipline caseload. We expect the quarterly workload hours to remain fairly consistent going forward. Figures 7a and 7b below summarize hours and fees for the most recent four quarters.



Total hours and fees unrelated to teacher discipline matters (other cases) were 104 hours and \$22,760 in the current quarter.

CONCLUSION

This quarterly report provides information regarding the volume, time to adjudication, and cost of 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 or (916) 210-6192.

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APPENDIX A: FY 2020-21 Quarter One—Published November 30, 2020

Discipline Cases at the Office of the Attorney General Provision 6, subdivisions (b)(1) and (b)(5)			
Total Referrals, Active and Inactive	Adverse Action	Judicial Review	Total
Referrals start of quarter, subdivision (b)(1)	186	14	200
Referrals received during the quarter	18	2	20
Referrals resolved during the quarter	51	4	55
Referrals end of the quarter, subdivision (b)(5)	153	12	165

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

Number of Days for Adverse Action Adjudications Provision 6, subdivision (b)(4)						
Minimum	Maximum	Mean	Goal	Above Goal	Median	Count
42	651	296	365	(69)	288	39

Number of Days from Receipt of Referral to Hearing Commenced Provision 6, subdivision (b)(6)				
Minimum	Maximum	Mean	Median	Count
238	549	387	384	6

Hours, Fees and Costs for Adverse Action Cases Provision 6, subdivisions (c)(1), (c)(2) and (c)(3)		
For 51 adverse action cases resolved:	Mean	Median
Hours per case, subdivision (c)(1)	77	52
Fees per case, subdivision (c)(2)	\$ 15,328	\$ 9,966
Costs per case, subdivision (c)(3)	\$ 106	\$ 0

Total Hours and Fees – Discipline and General Litigation Cases Provision 6, 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)	3,112	\$ 681,635
Other cases, subdivisions (d)(3) and (d)(4)	104	\$ 22,760
All cases combined	3,216	\$ 704,395

APPENDIX B: FISCAL YEAR 2019-20

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)	152	10	162
Referrals received during the year	147	15	162
Referrals resolved during the year	113	11	124
Referrals end of the year, subdivision (b)(5)	186	14	200

Further Investigation Requested and Received Provision 7, subdivisions (b)(2) and (b)(3)	
Further investigation requests, subdivision (b)(2)	33
Supplemental investigations received, subdivision (b)(3)	16

Number of Days for Adverse Action Adjudications Provision 7, subdivision (b)(4)						
Minimum	Maximum	Mean	Goal	Above Goal	Median	Count
13	1,954	369	365	4	297	133

Number of Days from Receipt of Referral to Hearing Commenced Provision 7, subdivision (b)(6)				
Minimum	Maximum	Mean	Median	Count
119	1,146	451	369	23

Hours, Fees and Costs for Adverse Action Cases Provision 7, subdivisions (c)(1), (c)(2) and (c)(3)		
For 236 adverse action cases resolved:	Mean	Median
Hours per case, subdivision (c)(1)	85	47
Fees per case, subdivision (c)(2)	\$15,384	\$8,999
Costs per case, subdivision (c)(3)	\$ 382	\$ 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)	11,909	\$2,511,291
Other cases, subdivisions (d)(3) and (d)(4)	385	\$ 81,278
All cases combined	12,294	\$2,592,574

APPENDIX C: FISCAL YEAR 2018-19

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)	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

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

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

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

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

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)	15,493	\$2,582,818
Other cases, subdivisions (d)(3) and (d)(4)	150	\$ 25,542
All cases combined	15,643	\$2,608,360

APPENDIX D: 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	118	10	128
Referrals resolved during the year	175	7	182
Referrals end of the year, subdivision (b)(5)	247	12	259

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

Number of Days for 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

APPENDIX E: Provision 6 Measures Reported

The Budget Act of 2020, 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.

APPENDIX F: 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.

When sufficient evidentiary support is identified, 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 they will be 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 disciplinary 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.⁴ 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.

⁴ When prosecution is declined, the case is not submitted to the commission for decision, and is closed.

Flowchart – Adjudication Process

