Information Sheet – 11/12/19 - Board of Trustees Meeting

TO: Board of Trustees Item: 8.7

FR: Celli Coeville

DATE: November 4, 2019

RE: New Administrative Regulation, AR 4117.7/4317.7, Employment Status Reports, Consider for Adoption

New Administrative Regulation, AR 4117.7/4317.7, for Employment Status Reports notes that pursuant to Education Code 44940 a violation or attempted violation of Penal Code 187 (murder) in the definition of a “mandatory leave of absence offense.” This is a new Administrative Regulation for the District

Recommended Action: Approve AR 4117.7/4317.7, for Employment Status Reports

CSBA Sample
Administrative Regulation
Employment Status Reports

AR 4117.7 4317.7
Personnel

Note: Education Code 44030.5 and 44242.5 and 5 CCR 80303 require the Superintendent to make a report to the Commission on Teacher Credentialing (CTC) when the employment status of a certificated employee has been changed as a result of alleged misconduct or while an allegation of misconduct is pending. Upon notification by the district or other specified agencies, CTC may conduct a review and take an adverse action against the certificated employee, including, but not limited to, suspension or revocation of the credential.

Note: Pursuant to 5 CCR 80303, the report must be made regardless of any proposed or actual agreement, settlement, or stipulation between the district and the employee not to make such a report. The report must also be made if the allegations are withdrawn in consideration of the employee's resignation, retirement, or other failure to contest the truth of the allegations.

Note: Pursuant to Education Code 44030.5 and 5 CCR 80303, as amended, the Superintendent's failure to make the report of the change in employment status or to notify the affected employee of the contents of 5 CCR 80303 would be considered unprofessional conduct and, if it is determined that the Superintendent refused or willfully neglected to make the report, the Superintendent may be found guilty of a misdemeanor and fined.

The Superintendent shall report to the Commission on Teacher Credentialing (CTC) any change in the employment status of a certificated employee who, while working in a position requiring a credential and as a result of an allegation of misconduct or while an allegation of misconduct is pending: (Education Code 44030.5, 44242.5; 5 CCR 80303)

1. Is dismissed or nonreelected

(cf. 4116 - Probationary/Permanent Status)
(cf. 4117.6 - Decision Not to Rehire)
(cf. 4118 - Dismissal/Suspension/Disciplinary Action)

2. Resigns

(cf. 4117.2/4217.2/4317.2 - Resignation)

3. Is suspended or placed on unpaid administrative leave for more than 10 days as a final adverse employment action

4. Retires

5. Is otherwise terminated by a decision not to employ or reemploy

(cf. 4119.21/4219.21/4319.21 - Professional Standards)
(cf. 5141.4 - Child Abuse Prevention and Reporting)

This report is not required when the change in employment status is due solely to unsatisfactory performance pursuant to Education Code 44932 or a reduction in force pursuant to Education Code 44955-44958. (Education Code 44030.5, 44242.5; 5 CCR 80303)

(cf. 4115 - Evaluation/Supervision)
(cf. 4117.3 - Personnel Reduction)

Note: Education Code 44030.5 requires the Superintendent to submit the report to CTC within 30 days of the change in employment status. 5 CCR 80303 requires CTC to acknowledge receipt of the report within 30 days of receipt.

Note: 5 CCR 80303 describes the contents that must be included in the report. The report should be made using a notification form available on CTC's web site and attaching relevant documents, evidence, and materials related to the district's investigation of the misconduct.

When required, the report of a change in employment status shall be submitted not later than 30 days after the employment action. The report shall be made using a form provided by CTC and shall include all known information about each alleged act of misconduct by the employee. The report shall contain the name and current address of the certificated employee, name of the district, last school or district assignment, an explanation of the allegation of misconduct or pending allegation of misconduct, current contact information for all persons who may have information relating to the alleged misconduct, and any and all documentation related to the case. (Education Code 44030.5; 5 CCR 80303)

Upon a change in employment status as a result of alleged misconduct or while an allegation of misconduct is pending, the Superintendent shall, in writing, inform the employee of the contents of 5 CCR 80303. (5 CCR 80303)

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

Additional Reports of Employee Misconduct

Note: Notification forms for the reports specified in items #1-2 below are available on CTC's web site.

The Superintendent or designee shall submit a report to CTC, using a form provided by CTC and attaching all relevant documents, whenever:

***Note: Pursuant to Education Code 44940, the district must notify CTC when an employee has been charged in court with a "mandatory leave of absence offense," defined as a sex or drug

offense specified in Education Code 44940 or a violation or attempted violation of Penal Code 187 (murder). Also see AR 4118 - Dismissal/Suspension/Disciplinary Action. Upon receiving notification from the district regarding any such offense, CTC will automatically suspend the employee's credential. Education Code 44423.5 also requires CTC to suspend an individual's credential upon receiving notice that another state has taken final action to revoke the individual's credential.***

1. An employee, by complaint, information, or indictment filed in court, is charged with a "mandatory leave of absence offense," defined as a sex or drug offense specified in Education Code 44940 or violation or attempted violation of Penal Code 187 (murder). (Education Code 44242.5, 44940, 44940.5)

Not later than 10 days after receipt of such a complaint, information, or indictment regarding an employee, the Superintendent or designee shall forward a copy of the received documents to CTC. In addition, the Superintendent or designee shall report to CTC any action taken in connection with extending the employee's mandatory leave beyond the initial period. (Education Code 44940, 44940.5)

Note: According to CTC's notification form, submission of this notification to CTC does not relieve the district of the obligation to also submit an employment status report of the same misconduct when the district takes disciplinary action resulting in a change in employment status.

If the offense results in a change in employment status, the Superintendent shall submit an employment status report in addition to the report of the mandatory leave of absence offense.

2. An employee refuses, without good cause, to fulfill a valid employment contract, or departs from district service without the consent of the Superintendent or Governing Board. (Education Code 44242.5, 44420)

Note: Education Code 44242.5 gives CTC authority to review any of the violations described in items #1-3 below upon receiving notice from a district. Since the law does not require districts to report these violations to CTC, the district should revise the following list to identify the types of violations that it will report and then ensure consistent implementation.

As appropriate, the Superintendent or designee also shall notify CTC of any of the following:

Note: Pursuant to Education Code 44242.5, CTC will not consider action on the basis of alleged sexual misconduct (item #1 below) unless there is evidence in the form of a written or oral declaration under penalty of perjury that confirms the personal knowledge of the declarant regarding the acts alleged to constitute misconduct.

1. A complaint filed with the district regarding a certificated employee's alleged sexual misconduct (Education Code 44242.5)

(cf. 4119.24/4219.24/4319.24 - Maintaining Appropriate Adult-Student Interactions)

The notice to CTC shall contain all of the following information: (5 CCR 80304)

a. Name of the employee alleged to have engaged in the sexual misconduct

b. Name, age, and address of each victim of the alleged sexual misconduct

c. A summary of all information known to the district regarding the alleged sexual misconduct

d. A summary of the action, if any, taken at the district level in response to the complaint of sexual misconduct

(cf. 1312.1 - Complaints Concerning District Employees)
(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)
(cf. 5145.7 - Sexual Harassment)

2. An employee's knowing and willful use of school records of student data in connection with, or in implicit or explicit attempts to recruit a student to be a customer for, any business owned by the certificated employee or in which the certificated employee is an employee (Education Code 44242.5, 44421.1)

(cf. 5125 - Student Records)

3. An employee's knowing and willful reporting of false fiscal expenditure data relative to the conduct of any educational program (Education Code 44242.5, 44421.5)

4. An employee's subversion or attempt to subvert any licensing examination or the administration of an examination (Education Code 44242.5, 44439)

Legal Reference:
EDUCATION CODE
44009 Conviction of specified crimes
44010 Sex offense, definitions
44011 Controlled substance offense, definitions
44030.5 Employment status reports
44225 Powers and duties of CTC
44242.5 Reports and review of alleged misconduct
44420-44440 Adverse actions by CTC against credential holder
44932 Causes for dismissal
44940 Sex offenses and narcotic offenses; compulsory leave of absence
44940.5 Compulsory leave of absence
44955-44958 Reduction in force
PENAL CODE

187 Murder
CODE OF REGULATIONS, TITLE 5
80303 Reports of change in employment status, alleged misconduct
80304 Notice of sexual misconduct

Management Resources:
COMMISSION ON TEACHER CREDENTIALING PUBLICATIONS
California's Laws and Rules Pertaining to the Discipline of Professional Certificated Personnel, 2019
WEB SITES
CSBA: http://www.csba.org
Commission on Teacher Credentialing: http://www.ctc.ca.gov

(11/08 4/14) 7/19