



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

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

**February 28, 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 second 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 October 1 through December 31, 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 tenth quarterly report.

Our goal for the past three years has been to eliminate the backlog of active (unadjudicated) adverse action cases, and to adjudicate pending cases within one year. These goals have been achieved.

- In our fourth quarterly report, published August 30, 2018, we defined backlog as the number of active adverse action cases above equilibrium (152) that remained at the end of the quarter. Figure 1a shows that active adverse action case counts have remained below 152 in each of the past four consecutive quarters.
- Quarterly summaries in the appendix show that we have adjudicated adverse action cases within an average of one year for the past two quarters. In addition, as shown in Figure 3b, median days from referral to adjudication have hovered below 300 days for the past three quarters.

It is important to note that as the oldest cases have been resolved, we have also been able to reduce average hours per case. Figure 6a shows this quarter's average is 80 hours, down from last quarter's average of 116 hours.

The percentage of cases at the Office of the Attorney General that were received prior to Fiscal Year 2018-19 continues to decline. As shown in Figures 4a and 4b, 73 percent of the adverse action cases adjudicated by the end of this quarter were received in Fiscal Year 2018-19 or later, and 90 percent of the remaining unadjudicated (active) cases were received in Fiscal Year 2018-19 or later.

For the first time, this report reallocates hours and fees charged to the commission for validating the data herein to hours and fees unrelated to teacher discipline matters.

The appendix on pages 8-17 includes summaries of all required metrics for the first two quarters of Fiscal Year 2019-20, annual summaries for Fiscal Years 2018-19 and 2017-18, Provision 6 reporting requirements, and a summary of the adjudication process for the commission's cases.

## 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 an administrative hearing for the commission's ultimate issuance of a final decision. Our focus in representing the commission in adverse action cases is to protect 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, 181 adverse action cases and 16 judicial review cases remained at the Office of the Attorney General. All data for the quarter are summarized in the appendix on page 9.

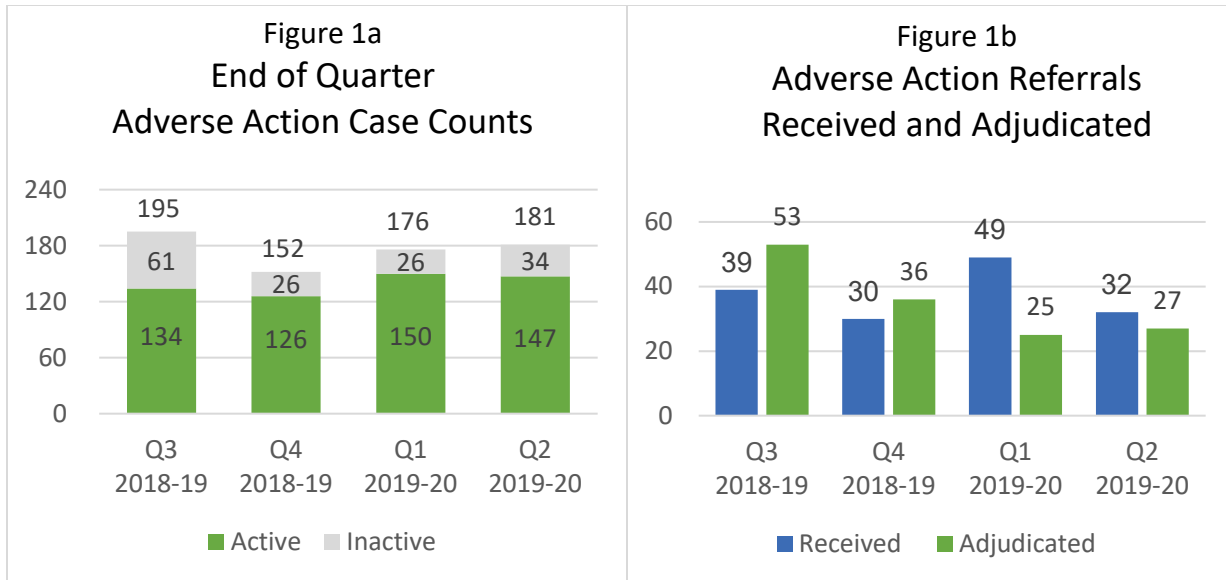
### ***Adverse Action Cases***

Adverse action cases are further broken down between those that have not yet been adjudicated (active), and those that have been (inactive).<sup>1</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. See Summary of the Adjudicative Process on page 15 of the appendix for a detailed description.

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 most recent quarter, 147 active and 34 inactive cases comprised the 181 remaining adverse action cases, resulting in a net increase of 5 cases by the end of the 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 32 adverse action referrals and adjudicated 27.

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<sup>1</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.



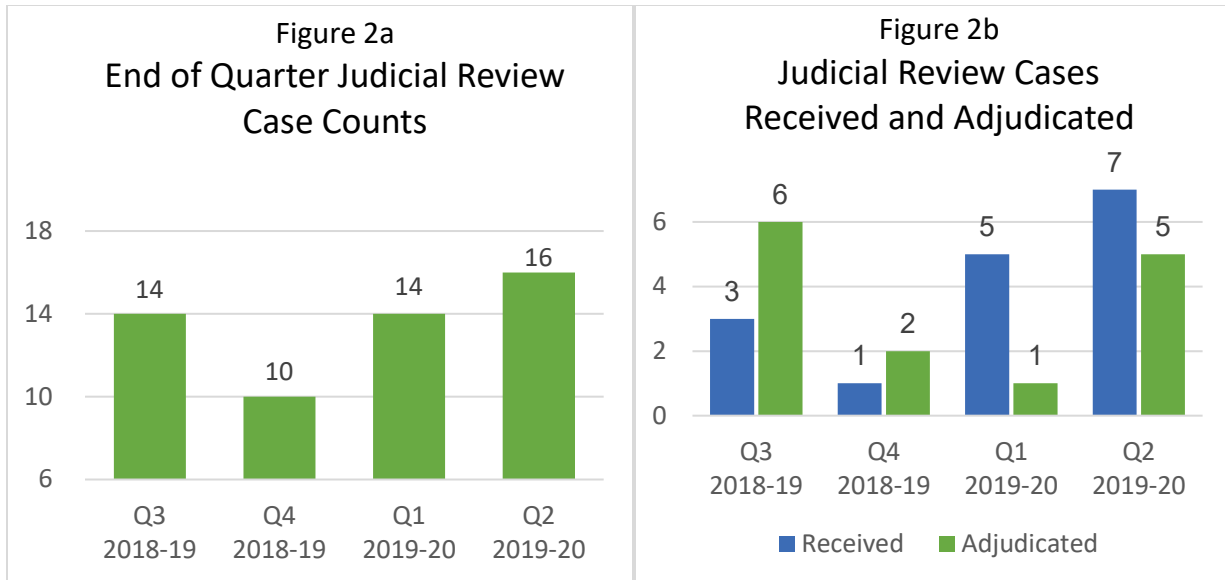
### **Judicial Review Cases**

If a respondent wishes to challenge the commission’s decision, they can petition for judicial review in superior court.<sup>2</sup> When this happens, a new judicial review case is opened.<sup>3</sup> Since the Office of the Attorney General 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 has a higher rate of judicial review cases than most other clients represented by the Licensing Section.

Figure 2a on page 4 shows that at the end of the quarter, 16 judicial review cases were pending at the Office of the Attorney General. Figure 2b shows the number of judicial review cases received and adjudicated during the most recent four quarters. Seven judicial review cases were referred to the Office of the Attorney General this quarter, a large quarterly number compared to nine total received in the previous three quarters.

<sup>2</sup> Sometimes a civil lawsuit is filed against the commission instead of a mandamus proceeding.

<sup>3</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 insufficient to sustain our burden of proof to impose discipline, the assigned deputy attorney general will request further investigation. Eight requests for further investigation were made this quarter and seven completed investigations were received.

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

In the current reporting quarter, 30 adverse action cases were adjudicated and the median (midpoint) duration between referral and adjudication was 288 days.<sup>4</sup> For the second quarter in a row, average days for adjudication came in at or below our goal of 365 days. The quickest adjudication this quarter was completed in 58 days, and the slowest took 1,148 days. Figures 3a and 3b on page 5 show that both the number of cases adjudicated and the median days to adjudicate cases are leveling off.

<sup>4</sup> The median is less distorted by outliers than the average (mean).

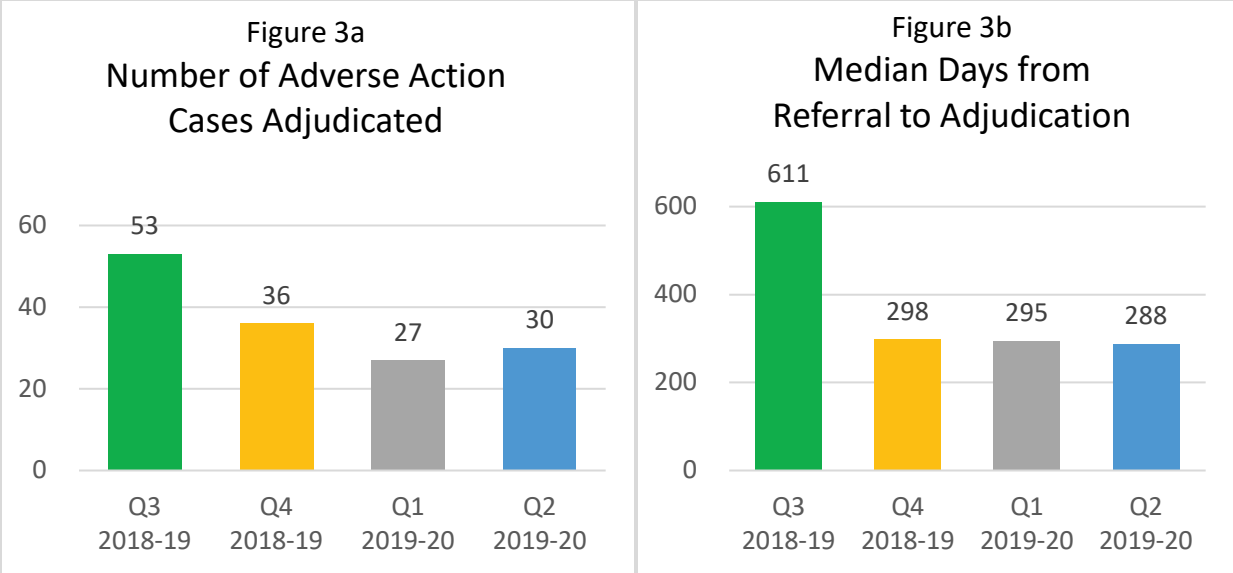
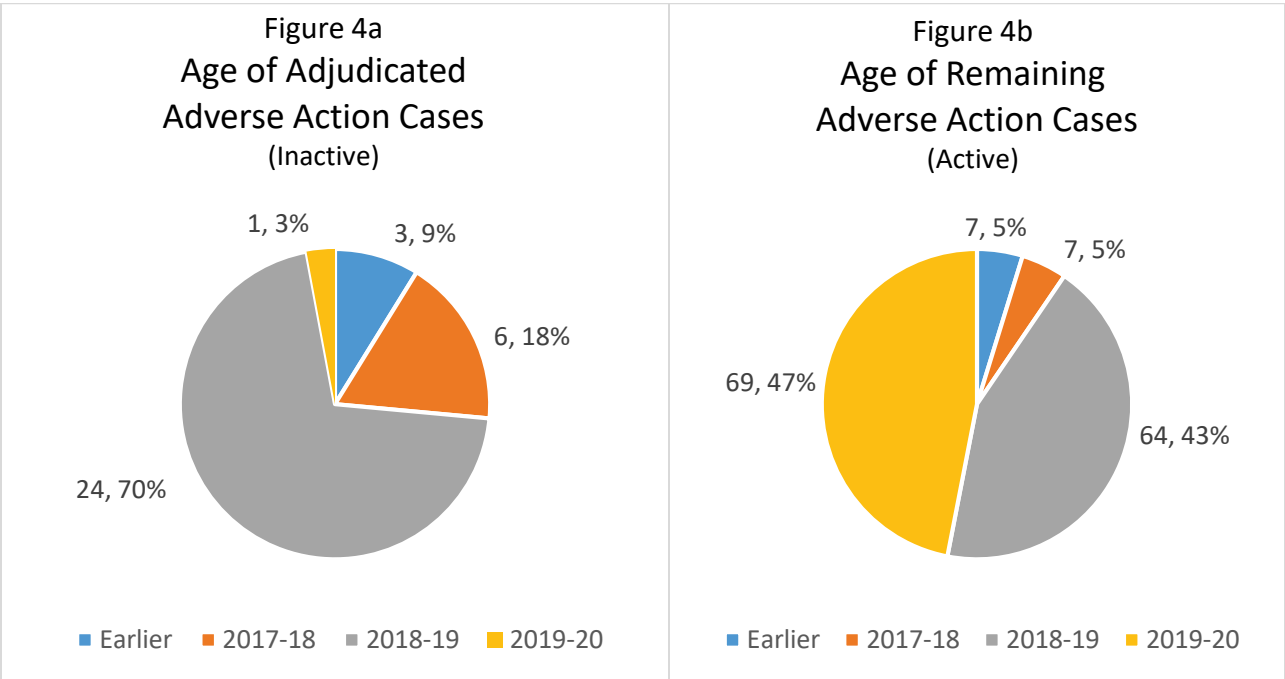


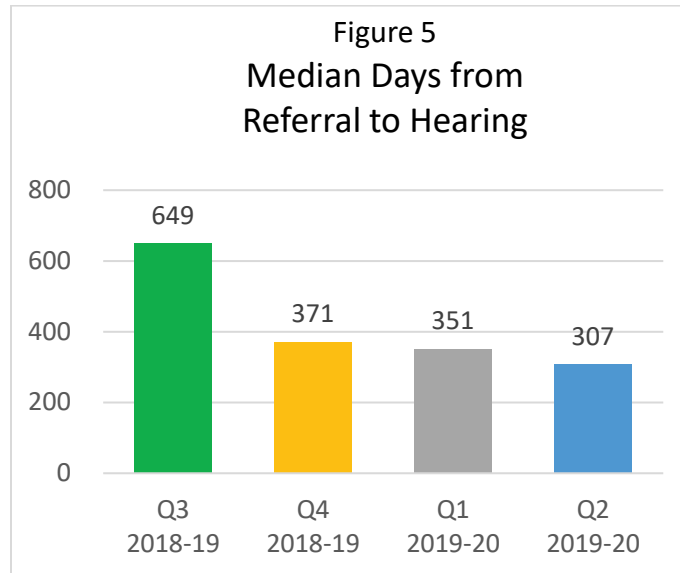
Figure 4a displays the age of the 34 adverse action cases that had been adjudicated at the end of the second quarter of Fiscal Year 2019-20. Twenty-five of the cases adjudicated were received in Fiscal Year 2018-19 or later; nine were received earlier.

Figure 4b shows the age of the remaining adverse action caseload at the end of the quarter. Of the 147 adverse action cases that remained active at the end of the quarter, 64 were received in Fiscal Year 2018-19 and 69 were received in Fiscal Year 2019-20. Only 14 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.



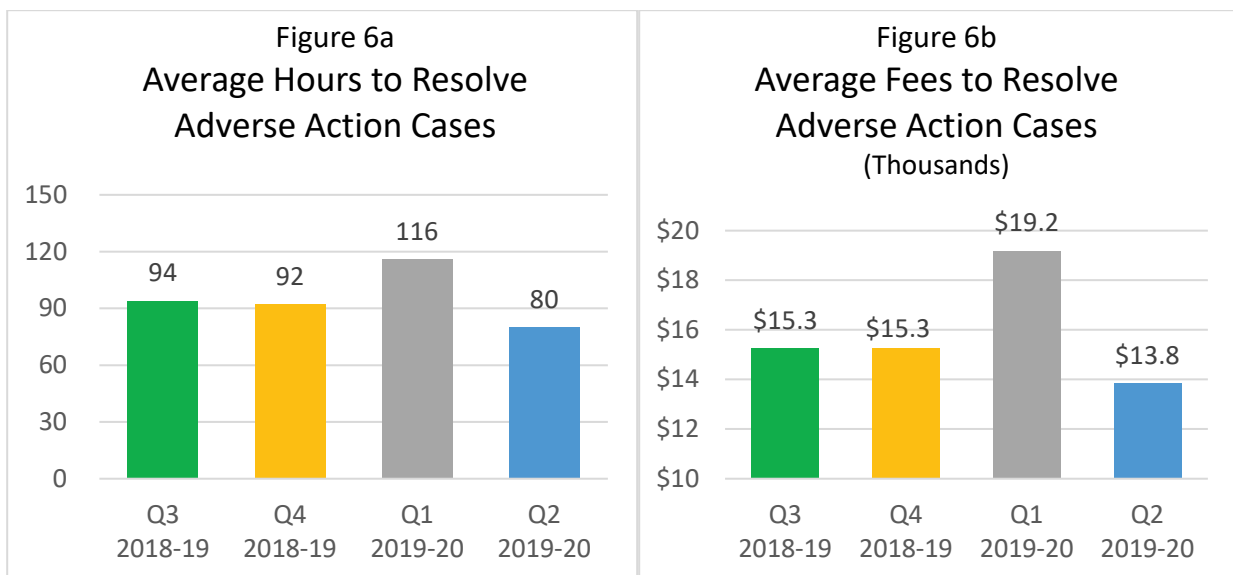
## Hearings [Provision 6, Subdivision (b)(6)]

Eight hearings commenced in the second quarter of Fiscal Year 2019-20. The median time to commence hearings was 307 days. Figure 5 displays the decreasing median number of days from receipt of referral to hearing for the most recent four quarters.



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

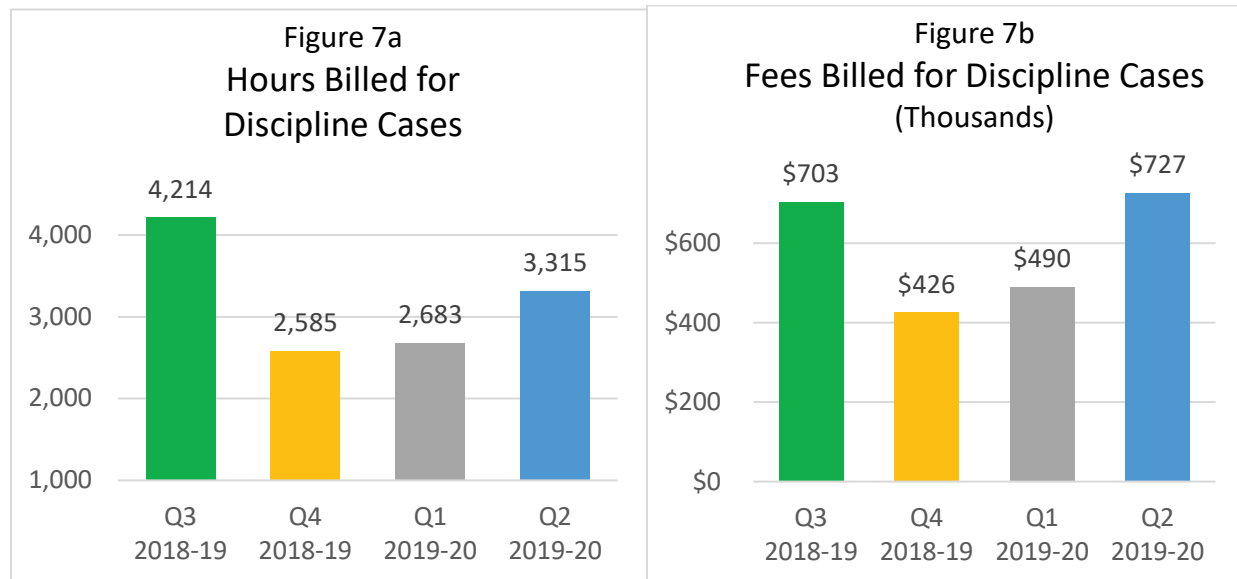
In this reporting quarter, an average of 80 hours were required to resolve adverse action cases. Comparing the same information in terms of fees, average fees to adjudicate matters this quarter were \$13,843. Figures 6a and 6b below show comparisons for the most recent four quarters.





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

In the second quarter of Fiscal Year 2019-20, the Attorney General's staff provided 3,315 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 \$727,011 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 last quarter. Figures 7a and 7b below summarize hours and fees for the most recent four quarters.



Total fees and hours unrelated to teacher discipline matters (other cases) rose from \$4,238 and 20 hours in the first quarter to \$46,420 and 219 hours in this second quarter. This change reflects our reallocation for the cost of validating the data reported herein from discipline cases, where the fees and hours were previously captured.

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

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**FY 2019-20 Quarter Two—Published February 28, 2020**

<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)	176	14	190
Referrals received during the quarter	32	7	39
Referrals resolved during the quarter	27	5	32
Referrals end of the quarter, subdivision (b)(5)	181	16	197

<b>Further Investigation Requested and Received Provision 6, subdivisions (b)(2) and (b)(3)</b>	
Further investigation requests, subdivision (b)(2)	8
Supplemental investigations received, subdivision (b)(3)	7

<b>Number of Days for Adverse Action Adjudications Provision 6, subdivision (b)(4)</b>						
Minimum	Maximum	Mean	Goal	Above Goal	Median	Count
58	1,148	365	365	0	288	30

<b>Number of Days from Receipt of Referral to Hearing Commenced Provision 6, subdivision (b)(6)</b>				
Minimum	Maximum	Mean	Median	Count
119	1,146	418	307	8

<b>Hours, Fees and Costs for Adverse Action Cases Provision 6, subdivisions (c)(1), (c)(2) and (c)(3)</b>		
For 27 adverse action cases resolved:	Mean	Median
Hours per case, subdivision (c)(1)	80	40
Fees per case, subdivision (c)(2)	\$13,843	\$6,927
Costs per case, subdivision (c)(3)	\$917	\$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)	3,315	\$727,011
Other cases, subdivisions (d)(3) and (d)(4)	219	\$46,420
All cases combined	3,534	\$773,431

**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

<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>5</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>5</sup> When prosecution is declined, the case is not submitted to the commission for decision, and is closed.

## Flowchart – Adjudication Process

