



Attorney General's Biannual Report

Legal Services Provided to the Commission on Teacher Credentialing

February 28, 2022

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Attorney General's Biannual Report

Legal Services Provided to the Commission on Teacher Credentialing

The Office of the Attorney General submits this first biannual report for Fiscal Year 2021-22 as required by the Budget Act of 2021, Item 6360-001-0407, Provision 6—For Support of Commission on Teacher Credentialing, payable from the Teacher Credentials Fund.

EXECUTIVE SUMMARY

This report provides information required under Provision 6 of the Budget Act for July 1 through December 31, 2021, concerning the caseload for the Commission on Teacher Credentialing. The Office of the Attorney General began quarterly reporting in Fiscal Year 2017-18 and biannual reporting in Fiscal Year 2021-22; this is the seventeenth report.

The goal of the Office of the Attorney General has been to eliminate any backlog of unadjudicated adverse action cases and to adjudicate cases, on average, within one year going forward. The Office of the Attorney General has eliminated the backlog that existed as of 2017 and, until the COVID-19 pandemic in March 2020, was on track to adjudicate most cases within one year. The pandemic impacted this goal. For example, the Office of Administrative Hearings continued most hearings for a period of months until it was able to implement new procedures and technologies to conduct evidentiary hearings virtually, which are now in place.

This report shows:

- Median days from the date the Attorney General receives a referral from the commission to adjudication decreased from 425 days in the fourth quarter of Fiscal Year 2020-21, to 363 days in the second quarter of Fiscal Year 2021-22 (Figure 3b).
- For those cases where sufficient evidence is identified to support filing with the commission, the median days from the date the Attorney General receives a referral from the commission to the commencement of a hearing at the Office of Administrative Hearings decreased from 474 days in the fourth quarter of Fiscal Year 2020-21, to 364 days in the second quarter of Fiscal Year 2021-22 (Figure 4).
- The Attorney General's legal work related to teacher discipline cases was stable from the 5,718 hours performed in the first two quarters of Fiscal Year 2021-22, when compared to the 5,730 hours of legal work performed during the two prior quarters (Figure 6a).

The appendices to this report include summaries of all required metrics for the first two quarters of Fiscal Year 2021-22, annual summaries for four previous fiscal years, Provision 6 reporting requirements, and a summary of the adjudication process for the commission's cases.

DISCUSSION

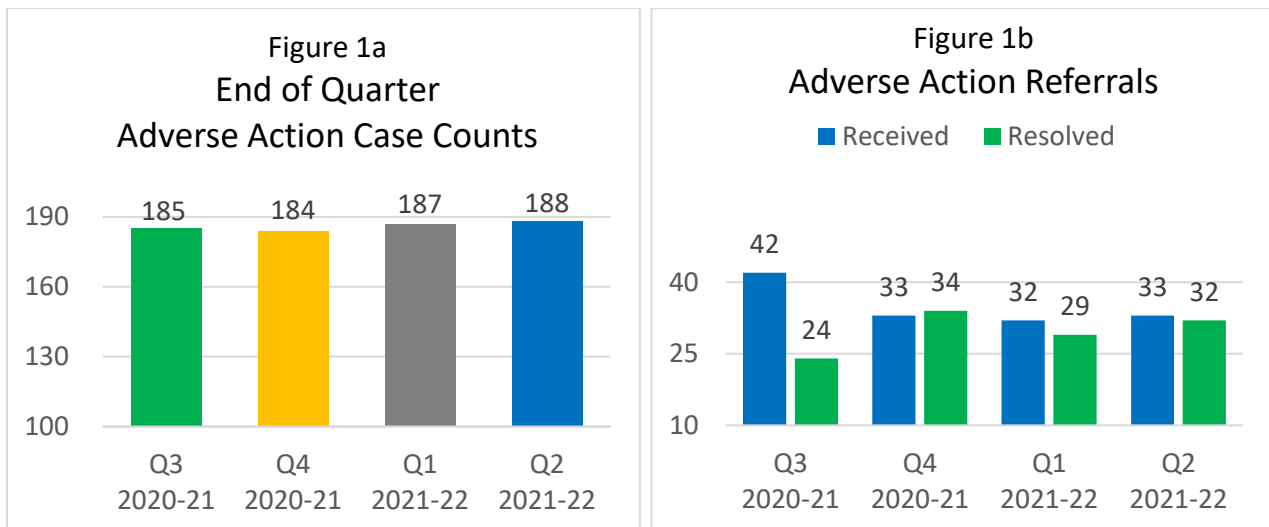
Volume of Cases [Provision 6, Subdivisions (b)(1) and (b)(5)]

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 administrative disciplinary proceedings filed to deny, revoke, or suspend a credential. The action involves 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 and appellate courts to review the commission's administrative decisions, or other civil actions against the commission related to the decisions it has issued. All data for the first and second quarters of Fiscal Year 2021-22 are summarized in Appendices A and B .

Adverse Action Cases

Adverse action case counts include those not yet adjudicated as well as those that have been adjudicated.¹ *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 H.

Figure 1a depicts adverse action case counts for the past four quarters. At the end of the second quarter of Fiscal Year 2021-22 there remained 188 cases, a net increase of four adverse action cases since the end of 2021. Figure 1b depicts the number of adverse action referrals received and adjudicated for the past four quarters. It shows that during the first two quarters, the Office of the Attorney General received 65 adverse action referrals and adjudicated 61.

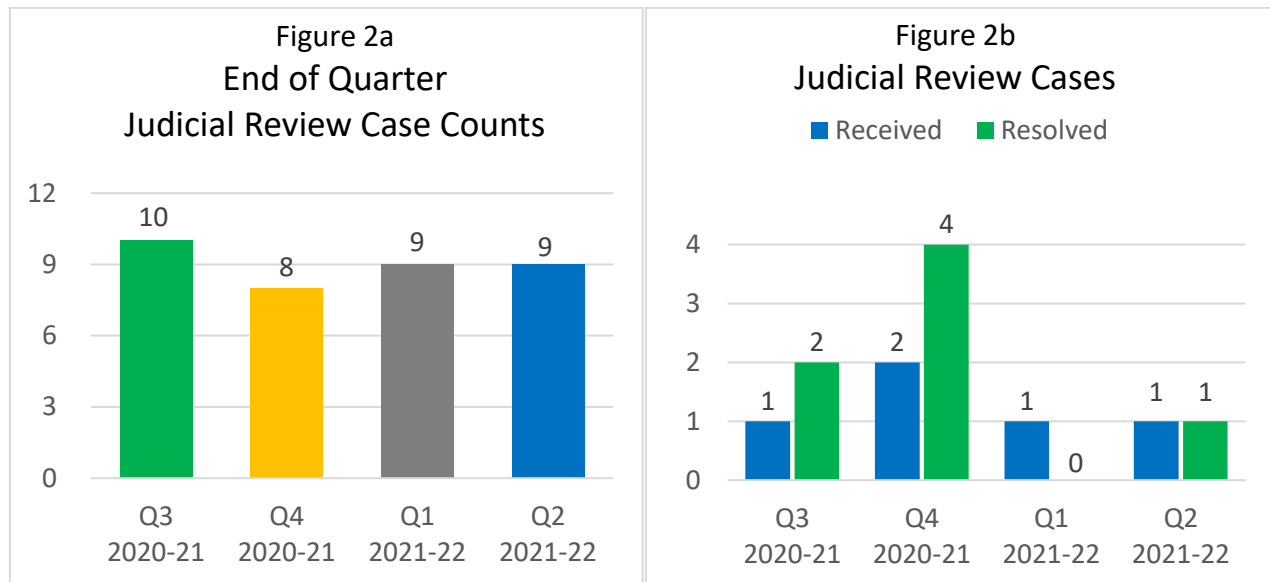


¹ Unadjudicated case counts more closely approximate the way the commission counts cases pending at the Office of the Attorney General, as regularly published in its reports.

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.² At the end of the second quarter of Fiscal Year 2021-22, nine judicial review cases were pending at the Office of the Attorney General (Figure 2a).

Figure 2b illustrates the number of judicial review cases received and adjudicated during the most recent four quarters. During this reporting period, two judicial review cases were referred to the Office of the Attorney General and one was adjudicated.



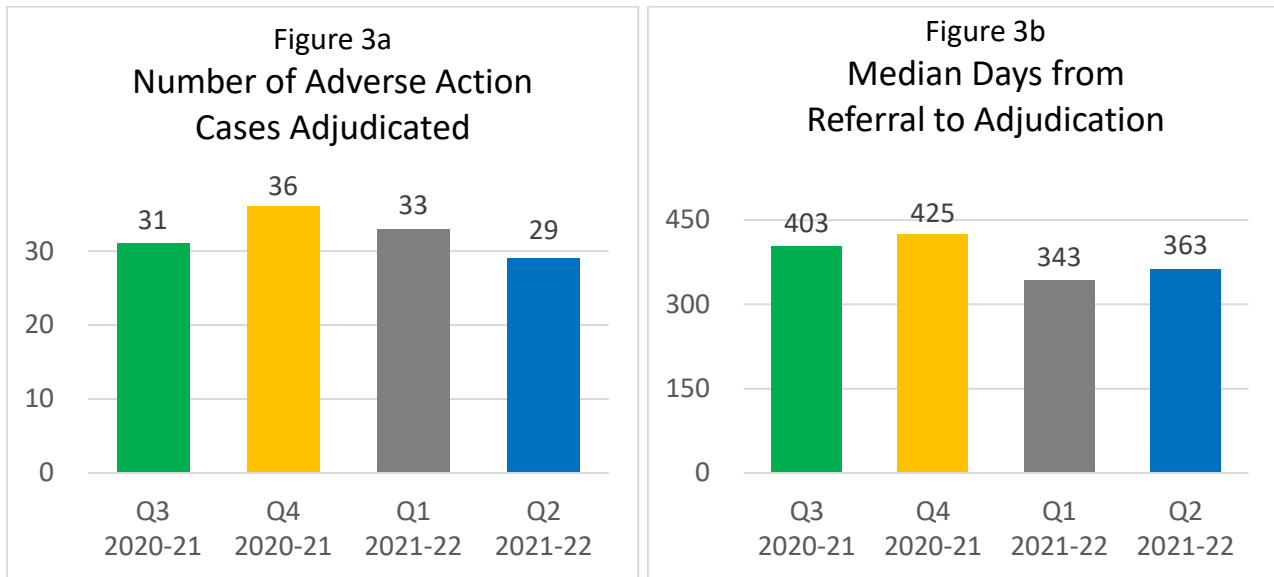
Further Investigations [Provision 6, Subdivisions (b)(2) and (b)(3)]

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. Thirteen requests for further investigation were made during the reporting period and 12 supplemental investigations were received (Appendices A and B).

² Occasionally, a civil lawsuit is filed against the commission instead of a mandamus proceeding.

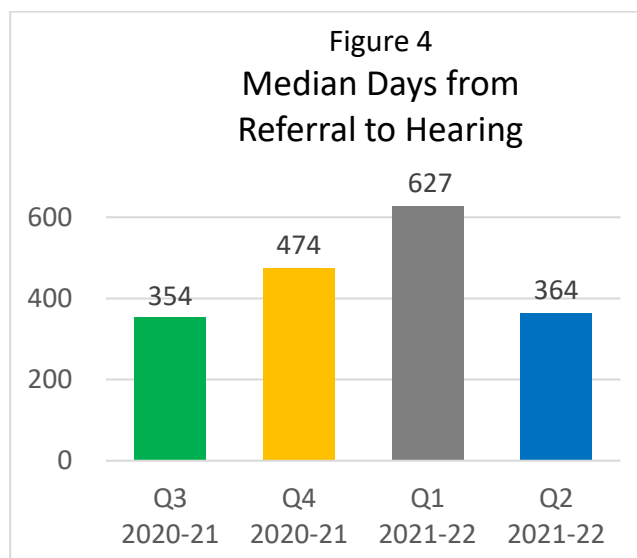
Adjudications [Provision 6, Subdivision (b)(4)]

During this reporting period, 62 adverse action cases were adjudicated. The average number of days for adjudication was 458 in the first quarter and 444 in the second quarter (Appendices A and B). Figures 3a and 3b show the number of cases adjudicated and the median days to adjudicate cases over the most recent four quarters.



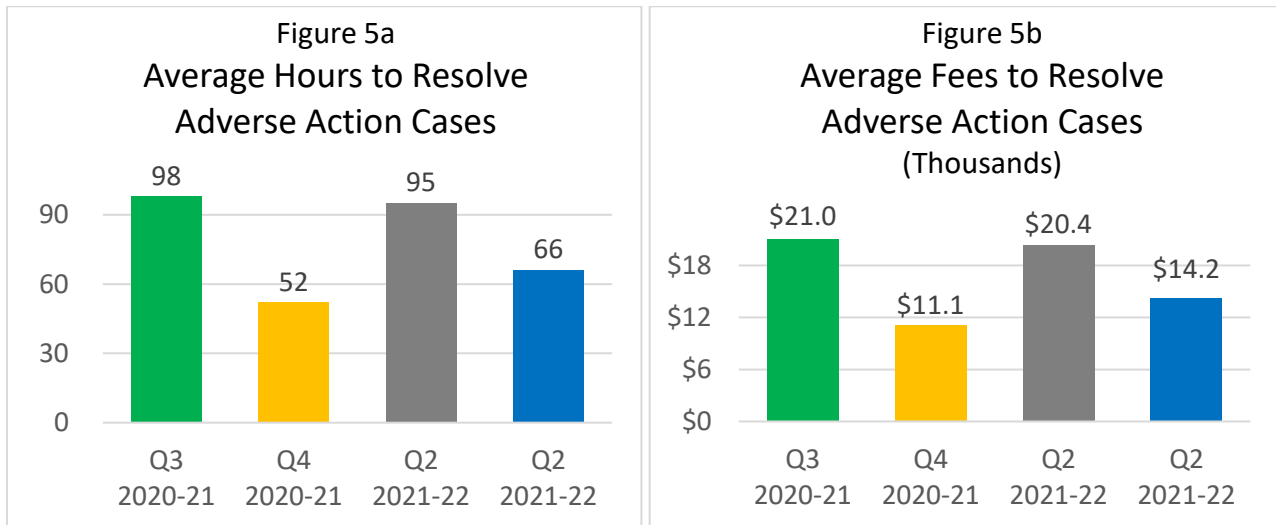
Hearings [Provision 6, Subdivision (b)(6)]

Figure 4 displays the median number of days from receipt of referral to hearing for the most recent four quarters. Seven hearings commenced in the first quarter and eight in the second quarter, with median time to commence hearings of 627 and 364 days, respectively.



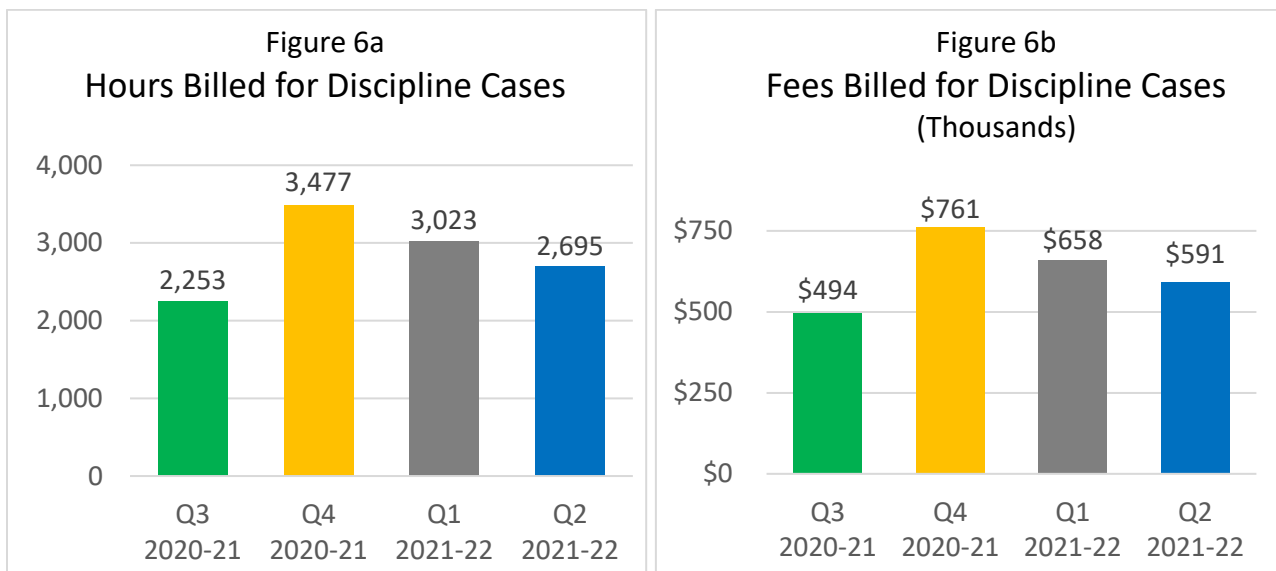
Average Hours and Fees [Provision 6, Subdivision (c)]

In the first two quarters of Fiscal Year 2021-22, an average of 95 and 66 hours were required to resolve adverse action cases and the average fees to adjudicate matters were \$20,369 and \$14,234.



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

In the first two quarters of this fiscal year, the Attorney General's staff provided a total of 5,718 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 \$1,249,016 to the commission related to the teacher discipline caseload for the first two quarters of the fiscal year. 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 625.75 hours and \$137,230 in the first two quarters (Appendices A and B). Those hours and fees include legal work enforcing or defending subpoenas, as well as other legal work not directly related to adverse action and judicial review cases.

CONCLUSION

This biannual 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 during the first two quarters of Fiscal Year 2021-22. 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 Senior Assistant Attorney General Carl Sonne at carl.sonne@doj.ca.gov or (619) 738-9423.

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APPENDIX A: FY 2021-22 Quarter Two—Published February 28, 2022

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)	187	9	196
Referrals received during the quarter	33	1	34
Referrals resolved during the quarter	32	1	33
Referrals end of the quarter, subdivision (b)(5)	188	9	197

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

Number of Days for Adverse Action Adjudications Provision 6, subdivision (b)(4)						
Minimum	Maximum	Mean	Goal	Above Goal	Median	Count
34	1,592	444	365	79	363	29

Number of Days from Receipt of Referral to Hearing Commenced Provision 6, subdivision (b)(6)				
Minimum	Maximum	Mean	Median	Count
278	496	366	364	8

Hours, Fees and Costs for Adverse Action Cases Provision 6, subdivisions (c)(1), (c)(2) and (c)(3)		
For resolved adverse action cases:	Mean	Median
Hours per case, subdivision (c)(1)	66	48
Fees per case, subdivision (c)(2)	\$ 14,234	\$ 10,555
Costs per case, subdivision (c)(3)	\$ 68	\$ 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)	2,695	\$ 591,101
Other cases, subdivisions (d)(3) and (d)(4)	266	\$ 58,211
All cases combined	2,961	\$ 649,312

APPENDIX B: FY 2021-22 Quarter One—Published February 28, 2022

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)	184	8	192
Referrals received during the quarter	32	1	33
Referrals resolved during the quarter	29	0	29
Referrals end of the quarter, subdivision (b)(5)	187	9	196

Further Investigation Requested and Received Provision 6, subdivisions (b)(2) and (b)(3)	
Further investigation requests, subdivision (b)(2)	5
Supplemental investigations received, subdivision (b)(3)	5

Number of Days for Adverse Action Adjudications Provision 6, subdivision (b)(4)						
Minimum	Maximum	Mean	Goal	Above Goal	Median	Count
9	1,578	458	365	93	343	33

Number of Days from Receipt of Referral to Hearing Commenced Provision 6, subdivision (b)(6)				
Minimum	Maximum	Mean	Median	Count
245	1,054	583	627	7

Hours, Fees and Costs for Adverse Action Cases Provision 6, subdivisions (c)(1), (c)(2) and (c)(3)		
For resolved adverse action cases:	Mean	Median
Hours per case, subdivision (c)(1)	95	58
Fees per case, subdivision (c)(2)	\$ 20,369	\$ 12,804
Costs per case, subdivision (c)(3)	\$ 44	\$ 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)	3,023	\$ 657,915
Other cases, subdivisions (d)(3) and (d)(4)	360	\$ 79,019
All cases combined	3,383	\$ 736,934

APPENDIX C: FISCAL YEAR 2020-21

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 the year, subdivision (b)(1)	186	14	200
Referrals received during the year	143	6	149
Referrals resolved during the year	145	12	157
Referrals end of the year, subdivision (b)(5)	184	8	192

Further Investigation Requested and Received Provision 6, subdivisions (b)(2) and (b)(3)	
Further investigation requests, subdivision (b)(2)	32
Supplemental investigations received, subdivision (b)(3)	19

Number of Days for Adverse Action Adjudications Provision 6, subdivision (b)(4)						
Minimum	Maximum	Mean	Goal	Above Goal	Median	Count
22	1,483	403	365	38	408	130

Number of Days from Receipt of Referral to Hearing Commenced Provision 6, subdivision (b)(6)				
Minimum	Maximum	Mean	Median	Count
111	859	462	446	24

Hours, Fees and Costs for Adverse Action Cases Provision 6, subdivisions (c)(1), (c)(2) and (c)(3)		
For resolved adverse action cases:	Mean	Median
Hours per case, subdivision (c)(1)	69	45
Fees per case, subdivision (c)(2)	\$ 14,332	\$ 9,798
Costs per case, subdivision (c)(3)	\$ 179	\$ 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)	11,051	\$ 2,420,022
Other cases, subdivisions (d)(3) and (d)(4)	786	\$ 171,129
All cases combined	11,837	\$ 2,591,151

APPENDIX D: FISCAL YEAR 2019-20

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 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 6, 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 6, 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 6, subdivision (b)(6)				
Minimum	Maximum	Mean	Median	Count
119	1,146	451	369	23

Hours, Fees and Costs for Adverse Action Cases Provision 6, subdivisions (c)(1), (c)(2) and (c)(3)		
For resolved adverse action cases:	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 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)	11,909	\$2,511,291
Other cases, subdivisions (d)(3) and (d)(4)	385	\$ 81,278
All cases combined	12,294	\$2,592,569

APPENDIX E: 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 resolved adverse action cases:	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 F: 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 resolved adverse action cases:	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 G: Provision 6 Measures Reported

The Budget Act of 2021, Item 6360-001-0407, Provision 6 states:

- (a) The Attorney General shall submit a biannual 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 biannual report shall be submitted by August 30 and February 28 of each year for the previous corresponding fiscal quarters.
- (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 subdivision (a) upon request if further explanation or information is required.

APPENDIX H: 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.³ 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.

³ When prosecution is declined, the case is not submitted to the commission for decision, and is closed.

Flowchart – Adjudication Process

