

Assembly Bill No. 365

CHAPTER 844

An act to amend Sections 45113, and 88013 of the Education Code, relating to public school employees.

[Approved by Governor October 12, 2001. Filed
with Secretary of State October 13, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 365, Nation. School employees: classified service.

Existing law, which is applicable to school districts and community college districts that have not adopted the merit system, requires the governing board of each school district and community college district to prescribe written rules governing the personnel management of the classified service, whereby those employees are designated as permanent employees of the district after serving a prescribed probationary period not to exceed one year.

This bill would require a permanent employee who accepts a promotion and fails to complete the probationary period for the promotional position, to be employed in the classification from which he or she was promoted.

This bill would incorporate additional changes in Sections 45113 and 88013 of the Education Code proposed by AB 128, that would become operative only if AB 128 and this bill are both chaptered and become effective on or before January 1, 2002, and this bill is chaptered last.

The people of the State of California do enact as follows:

SECTION 1. Section 45113 of the Education Code is amended to read:

45113. The governing board of a school district shall prescribe written rules and regulations, governing the personnel management of the classified service, which shall be printed and made available to employees in the classified service, the public, and those concerned with the administration of this section, whereby these employees are designated as permanent employees of the district after serving a prescribed period of probation which shall not exceed one year. A permanent employee who accepts a promotion and fails to complete the probationary period for that promotional position, shall be employed in the classification from which he or she was promoted.

Any employee designated as a permanent employee shall be subject to disciplinary action only for cause as prescribed by rule or regulation of the governing board, but the governing board's determination of the sufficiency of the cause for disciplinary action shall be conclusive.

The governing board shall adopt rules of procedure for disciplinary proceedings which shall contain a provision for informing the employee by written notice of the specific charges against him or her, a statement of the employee's right to a hearing on those charges, and the time within which the hearing may be requested which shall be not less than five days after service of the notice to the employee, and a card or paper, the signing and filing of which shall constitute a demand for hearing, and a denial of all charges. The burden of proof shall remain with the governing board, and any rule or regulation to the contrary shall be void.

No disciplinary action shall be taken for any cause which arose prior to the employee's becoming permanent, nor for any cause which arose more than two years preceding the date of the filing of the notice of cause unless the cause was concealed or not disclosed by the employee when it could be reasonably assumed that the employee should have disclosed the facts to the employing district.

This section shall apply only to districts not incorporating the merit system as outlined in Article 6 (commencing with Section 45240) of this chapter.

SEC. 1.5. Section 45113 of the Education Code is amended to read:

45113. (a) The governing board of a school district shall prescribe written rules and regulations, governing the personnel management of the classified service, which shall be printed and made available to employees in the classified service, the public, and those concerned with the administration of this section, whereby these employees are designated as permanent employees of the district after serving a prescribed period of probation which shall not exceed one year. A permanent employee who accepts a promotion and fails to complete the probationary period for that promotional position, shall be employed in the classification from which he or she was promoted.

(b) Any employee designated as a permanent employee shall be subject to disciplinary action only for cause as prescribed by rule or regulation of the governing board, but the governing board's determination of the sufficiency of the cause for disciplinary action shall be conclusive.

(c) The governing board shall adopt rules of procedure for disciplinary proceedings which shall contain a provision for informing the employee by written notice of the specific charges against him or her, a statement of the employee's right to a hearing on those charges, and the time within which the hearing may be requested which shall be not less



than five days after service of the notice to the employee, and a card or paper, the signing and filing of which shall constitute a demand for hearing, and a denial of all charges. The burden of proof shall remain with the governing board, and any rule or regulation to the contrary shall be void.

(d) No disciplinary action shall be taken for any cause which arose prior to the employee's becoming permanent, nor for any cause which arose more than two years preceding the date of the filing of the notice of cause unless the cause was concealed or not disclosed by the employee when it could be reasonably assumed that the employee should have disclosed the facts to the employing district.

(e) Nothing in this section shall be construed to prohibit the governing board, pursuant to the terms of an agreement with an employee organization under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, from delegating its authority to determine whether sufficient cause exists for disciplinary action against classified employees, excluding peace officers as defined in Section 830.32 of the Penal Code, to an impartial third party hearing officer. However, the governing board shall retain authority to review the determination under the standards set forth in Section 1286.2 of the Code of Civil Procedure.

(f) This section shall apply only to districts not incorporating the merit system as outlined in Article 6 (commencing with Section 45240) of this chapter.

SEC. 2. Section 88013 of the Education Code is amended to read:

88013. The governing board of a community college district shall prescribe written rules and regulations, governing the personnel management of the classified service, which shall be printed and made available to employees in the classified service, the public, and those concerned with the administration of this section, whereby these employees are, except as provided in Section 72411, designated as permanent employees of the district after serving a prescribed period of probation which shall not exceed one year. A permanent employee who accepts a promotion and fails to complete the probationary period for that promotional classification, shall be employed in the position from which he or she was promoted.

Any employee designated as a permanent employee shall be subject to disciplinary action only for cause as prescribed by rule or regulation of the governing board, but the governing board's determination of the sufficiency of the cause for disciplinary action shall be conclusive.

The governing board shall adopt rules of procedure for disciplinary proceedings which shall contain a provision for informing the employee by written notice of the specific charges against him or her, a statement



of the employee's right to a hearing on those charges, and the time within which the hearing may be requested which shall be not less than five days after service of the notice to the employee, and a card or paper, the signing and filing of which shall constitute a demand for hearing, and a denial of all charges. The burden of proof shall remain with the governing board, and any rule or regulation to the contrary shall be void.

No disciplinary action shall be taken for any cause that arose prior to the employee's becoming permanent, or for any cause that arose more than two years preceding the date of the filing of the notice of cause, unless the cause was concealed or not disclosed by the employee when it could be reasonably assumed that the employee should have disclosed the facts to the employing district.

This section shall apply only to districts not incorporating the merit system as outlined in Article 3 (commencing with Section 88060).

SEC. 2.5. Section 88013 of the Education Code is amended to read:

88013. (a) The governing board of a community college district shall prescribe written rules and regulations, governing the personnel management of the classified service, which shall be printed and made available to employees in the classified service, the public, and those concerned with the administration of this section, whereby these employees are, except as provided in Section 72411, designated as permanent employees of the district after serving a prescribed period of probation which shall not exceed one year. A permanent employee who accepts a promotion and fails to complete the probationary period for that promotional classification, shall be employed in the position from which he or she was promoted.

(b) Any employee designated as a permanent employee shall be subject to disciplinary action only for cause as prescribed by rule or regulation of the governing board, but the governing board's determination of the sufficiency of the cause for disciplinary action shall be conclusive.

(c) The governing board shall adopt rules of procedure for disciplinary proceedings which shall contain a provision for informing the employee by written notice of the specific charges against him or her, a statement of the employee's right to a hearing on those charges, and the time within which the hearing may be requested which shall be not less than five days after service of the notice to the employee, and a card or paper, the signing and filing of which shall constitute a demand for hearing, and a denial of all charges. The burden of proof shall remain with the governing board, and any rule or regulation to the contrary shall be void.

(d) No disciplinary action shall be taken for any cause that arose prior to the employee's becoming permanent, or for any cause that arose more



than two years preceding the date of the filing of the notice of cause, unless the cause was concealed or not disclosed by the employee when it could be reasonably assumed that the employee should have disclosed the facts to the employing district.

(e) Nothing in this section shall be construed to prohibit the governing board, pursuant to the terms of an agreement with an employee organization under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, from delegating its authority to determine whether sufficient cause exists for disciplinary action against classified employees, excluding peace officers as defined in Section 830.32 of the Penal Code, to an impartial third party hearing officer. However, the governing board shall retain authority to review the determination under the standards set forth in Section 1286.2 of the Code of Civil Procedure.

(f) This section shall apply only to districts not incorporating the merit system as outlined in Article 3 (commencing with Section 88060).

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 45113 of the Education Code proposed by both this bill and AB 128. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 45113 of the Education Code, and (3) this bill is enacted after AB 128, in which case Section 1 of this bill shall not become operative.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 88013 of the Education Code proposed by both this bill and AB 128. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 88013 of the Education Code, and (3) this bill is enacted after AB 128, in which case Section 2 of this bill shall not become operative.

