

AMENDED IN ASSEMBLY JUNE 22, 2010

AMENDED IN ASSEMBLY JUNE 14, 2010

AMENDED IN SENATE APRIL 29, 2010

**SENATE BILL**

**No. 1285**

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**Introduced by Senator Steinberg**

February 19, 2010

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An act to amend Sections 1240, 35035, 42605, 44955, and 44956 of the Education Code, relating to education employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1285, as amended, Steinberg. Education employment.

(1) Existing law requires the county superintendent of schools to visit and examine each school in his or her county at reasonable intervals to observe its operation and learn of its problems. Existing law requires that these visits be conducted for specified purposes relating to school safety, pupil instruction, and the accuracy of specified data.

This bill would additionally require that these visits determine the extent to which ~~the years of prior experience of teachers employed in the schools reflect the average teacher experience range within the school district during the previous school year~~ *percentage of teachers in each school who are in their first or 2nd year of teaching exceeds or falls below the percentage of teachers in the district who are in their first or 2nd year of teaching, as specified.*

(2) Existing law requires the superintendent of each school district to perform specified duties, including, subject to the approval of the governing board, assigning certificated employees to the positions in which they are to serve.

~~This bill would require the superintendent to assign teachers on a basis that allows each school in the district to reflect the average teacher experience, as defined in such a manner that the percentage of teachers in each school who are in their first or 2nd year of teaching not exceed the percentage of teachers in the district who are in their first or 2nd year of teaching by more than 10 percentage points, as specified.~~ Because the bill would increase the duties of the school district superintendent, it would impose a state-mandated local program.

(3) Existing law establishes various categorical education programs and appropriates the funding for those programs in the annual Budget Act. Existing law authorizes the recipients of certain categorical funds, for the 2008–09 fiscal year to the 2012–13 fiscal year, inclusive, to use these funds for any educational purpose, except as specified.

This bill would eliminate this categorical flexibility for a certain program relating to county oversight. The bill would make a conforming change relating to this provision.

(4) Existing law requires that, when a reduction in the number of certificated employees employed by a school district is authorized for specified reasons, the layoffs occur in order of employee seniority. Existing law provides certain exceptions to this requirement, including an exception for purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws. Existing law requires, for 39 months from the date of termination, that any employee who in the meantime has not attained 65 years of age have the preferred right to reappointment, in the order of original employment, as specified. Existing law provides certain exceptions to this requirement, including an exception for purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.

This bill would provide that this exception relates to both pupils and certificated employees. The bill would require that, when ~~teachers~~ *certificated employees who provide instruction in a classroom* are subject to layoffs pursuant to these provisions, that the proportion of ~~classroom teachers~~ *certificated employees who provide instruction in a classroom* terminated at schools in deciles 1 to 3, inclusive, of the Academic Performance Index, and persistently lowest-achieving schools, as specified, be no greater than the proportion of ~~classroom teachers~~ *certificated employees who provide instruction in a classroom* terminated in the school district as a whole. The bill would authorize school districts to deviate from reappointing ~~teachers~~ *certificated*

*employees who provide instruction in a classroom* in order of seniority for purposes of furthering improvements in pupil achievement at schools in deciles 1 to 3, inclusive, of the Academic Performance Index, and persistently lowest-achieving schools, as specified.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

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

1 SECTION 1. (a) The Legislature finds and declares that every  
2 California child has a constitutional right, under the equal  
3 protection clause of the California Constitution, to ~~an equal~~  
4 ~~opportunity to attend a school that affords a balance of effective~~  
5 ~~and experienced teachers that is comparable to the balance of~~  
6 ~~effective and experienced teachers at other schools within the same~~  
7 ~~school district. The equal educational opportunity.~~

8 (b) The Legislature finds that paragraph (2) of subdivision (d)  
9 of Section 44955 of the Education Code provides that, for purposes  
10 of a reduction in force, school districts may deviate from  
11 terminating a certificated employee in order of seniority in order  
12 to maintain or achieve compliance with the constitutional guarantee  
13 of equal protection of the laws. Nonetheless, the Legislature takes  
14 notice that some school districts have declined to use this authority  
15 and thereby have ~~harmed~~ *not protected* pupils' rights to ~~education~~  
16 *equal educational opportunity*. It is therefore the intent of the  
17 Legislature that school districts utilize this authority to prevent  
18 disparate impacts of teacher layoffs on pupils' rights to education.

19 SEC. 2. Section 1240 of the Education Code is amended to  
20 read:

21 1240. The county superintendent of schools shall do all of the  
22 following:

23 (a) Superintend the schools of his or her county.

1 (b) Maintain responsibility for the fiscal oversight of each school  
2 district in his or her county pursuant to the authority granted by  
3 this code.

4 (c) (1) Visit and examine each school in his or her county at  
5 reasonable intervals to observe its operation and to learn of its  
6 problems. He or she annually may present a report of the state of  
7 the schools in his or her county, and of his or her office, including,  
8 but not limited to, his or her observations while visiting the schools,  
9 to the board of education and the board of supervisors of his or  
10 her county.

11 (2) (A) For fiscal years 2004–05 to 2006–07, inclusive, to the  
12 extent that funds are appropriated for purposes of this paragraph,  
13 the county superintendent, or his or her designee, annually shall  
14 submit a report, at a regularly scheduled November board meeting,  
15 to the governing board of each school district under his or her  
16 jurisdiction, the county board of education of his or her county,  
17 and the board of supervisors of his or her county describing the  
18 state of the schools in the county or of his or her office that are  
19 ranked in deciles 1 to 3, inclusive, of the 2003 base Academic  
20 Performance Index (API), as defined in subdivision (b) of Section  
21 17592.70, and shall include, among other things, his or her  
22 observations while visiting the schools and his or her  
23 determinations for each school regarding the status of all of the  
24 circumstances listed in subparagraph (J) and teacher  
25 misassignments and teacher vacancies. As a condition for receipt  
26 of funds, the county superintendent, or his or her designee, shall  
27 use a standardized template to report the circumstances listed in  
28 subparagraph (J) and teacher misassignments and teacher  
29 vacancies, unless the current annual report being used by the county  
30 superintendent, or his or her designee, already includes those details  
31 for each school.

32 (B) Commencing with the 2007–08 fiscal year, to the extent  
33 that funds are appropriated for purposes of this paragraph, the  
34 county superintendent, or his or her designee, annually shall submit  
35 a report, at a regularly scheduled November board meeting, to the  
36 governing board of each school district under his or her jurisdiction,  
37 the county board of education of his or her county, and the board  
38 of supervisors of his or her county describing the state of the  
39 schools in the county or of his or her office that are ranked in  
40 deciles 1 to 3, inclusive, of the 2006 base API, pursuant to Section

52056. As a condition for the receipt of funds, the annual report shall include the determinations for each school made by the county superintendent, or his or her designee, regarding the status of all of the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies, and the county superintendent, or his or her designee, shall use a standardized template to report the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies, unless the current annual report being used by the county superintendent, or his or her designee, already includes those details with the same level of specificity that is otherwise required by this subdivision. For purposes of this section, schools ranked in deciles 1 to 3, inclusive, on the 2006 base API shall include schools determined by the department to meet either of the following:

- (i) The school meets all of the following criteria:
  - (I) Does not have a valid base API score for 2006.
  - (II) Is operating in fiscal year 2007–08 and was operating in fiscal year 2006–07 during the Standardized Testing and Reporting (STAR) Program testing period.
  - (III) Has a valid base API score for 2005 that was ranked in deciles 1 to 3, inclusive, in that year.
- (ii) The school has an estimated base API score for 2006 that would be in deciles 1 to 3, inclusive.
- (C) The department shall estimate an API score for any school meeting the criteria of subclauses (I) and (II) of clause (i) of subparagraph (B) and not meeting the criteria of subclause (III) of clause (i) of subparagraph (B), using available test scores and weighting or corrective factors it deems appropriate. The department shall post the API scores on its Internet Web site on or before May 1.
- (D) For purposes of this section, references to schools ranked in deciles 1 to 3, inclusive, on the 2006 base API shall exclude schools operated by county offices of education pursuant to Section 56140, as determined by the department.
- (E) In addition to the requirements above, the county superintendent, or his or her designee, annually shall verify both of the following:
  - (i) That pupils who have not passed the high school exit examination by the end of grade 12 are informed that they are entitled to receive intensive instruction and services for up to two

1 consecutive academic years after completion of grade 12 or until  
2 the pupil has passed both parts of the high school exit examination,  
3 whichever comes first, pursuant to paragraphs (4) and (5) of  
4 subdivision (d) of Section 37254.

5 (ii) That pupils who have elected to receive intensive instruction  
6 and services, pursuant to paragraphs (4) and (5) of subdivision (d)  
7 of Section 37254, are being served.

8 (F) (i) Commencing with the 2010–11 fiscal year and every  
9 third year thereafter, the Superintendent shall identify a list of  
10 schools ranked in deciles 1 to 3, inclusive, of the API for which  
11 the county superintendent, or his or her designee, annually shall  
12 submit a report, at a regularly scheduled November board meeting,  
13 to the governing board of each school district under his or her  
14 jurisdiction, the county board of education of his or her county,  
15 and the board of supervisors of his or her county that describes the  
16 state of the schools in the county or of his or her office that are  
17 ranked in deciles 1 to 3, inclusive, of the base API as defined in  
18 clause (ii).

19 (ii) For the 2010–11 fiscal year, the list of schools ranked in  
20 deciles 1 to 3, inclusive, of the base API shall be updated using  
21 the criteria set forth in clauses (i) and (ii) of subparagraph (B),  
22 subparagraph (C), and subparagraph (D), as applied to the 2009  
23 base API and thereafter shall be updated every third year using  
24 the criteria set forth in clauses (i) and (ii) of subparagraph (B),  
25 subparagraph (C), and subparagraph (D), as applied to the base  
26 API of the year preceding the third year consistent with clause (i).

27 (iii) As a condition for the receipt of funds, the annual report  
28 shall include the determinations for each school made by the county  
29 superintendent, or his or her designee, regarding the status of all  
30 of the circumstances listed in subparagraph (J) and teacher  
31 misassignments and teacher vacancies, and the county  
32 superintendent, or his or her designee, shall use a standardized  
33 template to report the circumstances listed in subparagraph (J) and  
34 teacher misassignments and teacher vacancies, unless the current  
35 annual report being used by the county superintendent, or his or  
36 her designee, already includes those details with the same level of  
37 specificity that is otherwise required by this subdivision.

38 (G) The county superintendent of the Counties of Alpine,  
39 Amador, Del Norte, Mariposa, Plumas, and Sierra, and the City  
40 and County of San Francisco shall contract with another county

1 office of education or an independent auditor to conduct the  
2 required visits and make all reports required by this paragraph.

3 (H) On a quarterly basis, the county superintendent, or his or  
4 her designee, shall report the results of the visits and reviews  
5 conducted that quarter to the governing board of the school district  
6 at a regularly scheduled meeting held in accordance with public  
7 notification requirements. The results of the visits and reviews  
8 shall include the determinations of the county superintendent, or  
9 his or her designee, for each school regarding the status of all of  
10 the circumstances listed in subparagraph (J) and teacher  
11 misassignments and teacher vacancies. If the county  
12 superintendent, or his or her designee, conducts no visits or reviews  
13 in a quarter, the quarterly report shall report that fact.

14 (I) The visits made pursuant to this paragraph shall be conducted  
15 at least annually and shall meet the following criteria:

16 (i) Minimize disruption to the operation of the school.

17 (ii) Be performed by individuals who meet the requirements of  
18 Section 45125.1.

19 (iii) Consist of not less than 25 percent unannounced visits in  
20 each county. During unannounced visits in each county, the county  
21 superintendent shall not demand access to documents or specific  
22 school personnel. Unannounced visits shall only be used to observe  
23 the condition of school repair and maintenance, and the sufficiency  
24 of instructional materials, as defined by Section 60119.

25 (J) The priority objective of the visits made pursuant to this  
26 paragraph shall be to determine the status of all of the following  
27 circumstances:

28 (i) Sufficient textbooks as defined in Section 60119 and as  
29 specified in subdivision (i).

30 (ii) The condition of a facility that poses an emergency or urgent  
31 threat to the health or safety of pupils or staff as defined in district  
32 policy or paragraph (1) of subdivision (c) of Section 17592.72.

33 (iii) The accuracy of data reported on the school accountability  
34 report card with respect to the availability of sufficient textbooks  
35 and instructional materials, as defined by Section 60119, and the  
36 safety, cleanliness, and adequacy of school facilities, including  
37 good repair as required by Sections 17014, 17032.5, 17070.75,  
38 and 17089.

39 (iv) The extent to which pupils who have not passed the high  
40 school exit examination by the end of grade 12 are informed that

1 they are entitled to receive intensive instruction and services for  
2 up to two consecutive academic years after completion of grade  
3 12 or until the pupil has passed both parts of the high school exit  
4 examination, whichever comes first, pursuant to paragraphs (4)  
5 and (5) of subdivision (d) of Section 37254.

6 (v) The extent to which pupils who have elected to receive  
7 intensive instruction and services, pursuant to paragraphs (4) and  
8 (5) of subdivision (d) of Section 37254, are being served.

9 ~~(vi) The extent to which the years of prior experience of teachers~~  
10 ~~employed in the schools reflects the average teacher experience~~  
11 ~~range within the school district during the previous school year.~~

12 ~~(vii) For purposes of this section, prior experience shall include~~  
13 ~~time served in assignment as a temporary, probationary, or~~  
14 ~~permanent teacher.~~

15 *(vi) The extent to which the percentage of teachers in each*  
16 *school who are in their first or second year of teaching exceeds*  
17 *or falls below the percentage of teachers in the district who are*  
18 *in their first or second year of teaching. For purposes of this*  
19 *clause, the first or second year of teaching shall include time served*  
20 *as a temporary, probationary, or permanent teacher.*

21 (K) The county superintendent may make the status  
22 determinations described in subparagraph (J) during a single visit  
23 or multiple visits. In determining whether to make a single visit  
24 or multiple visits for this purpose, the county superintendent shall  
25 take into consideration factors such as cost-effectiveness, disruption  
26 to the schoolsite, deadlines, and the availability of qualified  
27 reviewers.

28 (L) If the county superintendent determines that the condition  
29 of a facility poses an emergency or urgent threat to the health or  
30 safety of pupils or staff as defined in district policy or paragraph  
31 (1) of subdivision (c) of Section 17592.72, or is not in good repair,  
32 as specified in subdivision (d) of Section 17002 and required by  
33 Sections 17014, 17032.5, 17070.75, and 17089, the county  
34 superintendent, among other things, may do any of the following:

35 (i) Return to the school to verify repairs.

36 (ii) Prepare a report that specifically identifies and documents  
37 the areas or instances of noncompliance if the district has not  
38 provided evidence of successful repairs within 30 days of the visit  
39 of the county superintendent or, for major projects, has not  
40 provided evidence that the repairs will be conducted in a timely



1 manner. The report may be provided to the governing board of the  
2 school district. If the report is provided to the school district, it  
3 shall be presented at a regularly scheduled meeting held in  
4 accordance with public notification requirements. The county  
5 superintendent shall post the report on his or her Internet Web site.  
6 The report shall be removed from the Internet Web site when the  
7 county superintendent verifies the repairs have been completed.

8 (d) Distribute all laws, reports, circulars, instructions, and blanks  
9 that he or she may receive for the use of the school officers.

10 (e) Annually, on or before August 15, present a report to the  
11 governing board of the school district and the Superintendent  
12 regarding the fiscal solvency of a school district with a disapproved  
13 budget, qualified interim certification, or a negative interim  
14 certification, or that is determined to be in a position of fiscal  
15 uncertainty pursuant to Section 42127.6.

16 (f) Keep in his or her office the reports of the Superintendent.

17 (g) Keep a record of his or her official acts, and of all the  
18 proceedings of the county board of education, including a record  
19 of the standing, in each study, of all applicants for certificates who  
20 have been examined, which shall be open to the inspection of an  
21 applicant or his or her authorized agent.

22 (h) Enforce the course of study.

23 (i) (1) Enforce the use of state textbooks and instructional  
24 materials and of high school textbooks and instructional materials  
25 regularly adopted by the proper authority in accordance with  
26 Section 51050.

27 (2) For purposes of this subdivision, sufficient textbooks or  
28 instructional materials has the same meaning as in subdivision (c)  
29 of Section 60119.

30 (3) (A) Commencing with the 2005–06 school year, if a school  
31 is ranked in any of deciles 1 to 3, inclusive, of the base API, as  
32 specified in paragraph (2) of subdivision (c), and not currently  
33 under review pursuant to a state or federal intervention program,  
34 the county superintendent specifically shall review that school at  
35 least annually as a priority school. A review conducted for purposes  
36 of this paragraph shall be completed by the fourth week of the  
37 school year. For the 2004–05 fiscal year only, the county  
38 superintendent shall make a diligent effort to conduct a visit to  
39 each school pursuant to this paragraph within 120 days of receipt  
40 of funds for this purpose.

(B) In order to facilitate the review of instructional materials before the fourth week of the school year, the county superintendent in a county with 200 or more schools that are ranked in any of deciles 1 to 3, inclusive, of the base API, as specified in paragraph (2) of subdivision (c), may utilize a combination of visits and written surveys of teachers for the purpose of determining sufficiency of textbooks and instructional materials in accordance with subparagraph (A) of paragraph (1) of subdivision (a) of Section 60119 and as defined in subdivision (c) of Section 60119.

If a county superintendent elects to conduct written surveys of teachers, the county superintendent shall visit the schools surveyed within the same academic year to verify the accuracy of the information reported on the surveys. If a county superintendent surveys teachers at a school in which the county superintendent has found sufficient textbooks and instructional materials for the previous two consecutive years and determines that the school does not have sufficient textbooks or instructional materials, the county superintendent shall within 10 business days provide a copy of the insufficiency report to the school district as set forth in paragraph (4).

(C) For purposes of this paragraph, “written surveys” may include paper and electronic or online surveys.

(4) If the county superintendent determines that a school does not have sufficient textbooks or instructional materials in accordance with subparagraph (A) of paragraph (1) of subdivision (a) of Section 60119 and as defined by subdivision (c) of Section 60119, the county superintendent shall do all of the following:

(A) Prepare a report that specifically identifies and documents the areas or instances of noncompliance.

(B) Provide within five business days of the review, a copy of the report to the school district, as provided in subdivision (c), or, if applicable, provide a copy of the report to the school district within 10 business days pursuant to subparagraph (B) of paragraph (3).

(C) Provide the school district with the opportunity to remedy the deficiency. The county superintendent shall ensure remediation of the deficiency no later than the second month of the school term.

(D) If the deficiency is not remedied as required pursuant to subparagraph (C), the county superintendent shall request the department to purchase the textbooks or instructional materials

1 necessary to comply with the sufficiency requirement of this  
2 subdivision. If the department purchases textbooks or instructional  
3 materials for the school district, the department shall issue a public  
4 statement at the first regularly scheduled meeting of the state board  
5 occurring immediately after the department receives the request  
6 of the county superintendent and that meets the applicable public  
7 notice requirements, indicating that the district superintendent and  
8 the governing board of the school district failed to provide pupils  
9 with sufficient textbooks or instructional materials as required by  
10 this subdivision. Before purchasing the textbooks or instructional  
11 materials, the department shall consult with the district to determine  
12 which textbooks or instructional materials to purchase. All  
13 purchases of textbooks or instructional materials shall comply with  
14 Chapter 3.25 (commencing with Section 60420) of Part 33. The  
15 amount of funds necessary for the purchase of the textbooks and  
16 materials is a loan to the school district receiving the textbooks or  
17 instructional materials. Unless the school district repays the amount  
18 owed based upon an agreed-upon repayment schedule with the  
19 Superintendent, the Superintendent shall notify the Controller and  
20 the Controller shall deduct an amount equal to the total amount  
21 used to purchase the textbooks and materials from the next  
22 principal apportionment of the district or from another  
23 apportionment of state funds.

24 (j) Preserve carefully all reports of school officers and teachers.

25 (k) Deliver to his or her successor, at the close of his or her  
26 official term, all records, books, documents, and papers belonging  
27 to the office, taking a receipt for them, which shall be filed with  
28 the department.

29 (l) (1) Submit two reports during the fiscal year to the county  
30 board of education in accordance with the following:

31 (A) The first report shall cover the financial and budgetary status  
32 of the county office of education for the period ending October  
33 31. The second report shall cover the period ending January 31.  
34 Both reports shall be reviewed by the county board of education  
35 and approved by the county superintendent no later than 45 days  
36 after the close of the period being reported.

37 (B) As part of each report, the county superintendent shall certify  
38 in writing whether or not the county office of education is able to  
39 meet its financial obligations for the remainder of the fiscal year  
40 and, based on current forecasts, for two subsequent fiscal years.

1 The certifications shall be classified as positive, qualified, or  
2 negative, pursuant to standards prescribed by the Superintendent,  
3 for the purposes of determining subsequent state agency actions  
4 pursuant to Section 1240.1. For purposes of this subdivision, a  
5 negative certification shall be assigned to a county office of  
6 education that, based upon current projections, will not meet its  
7 financial obligations for the remainder of the fiscal year or for the  
8 subsequent fiscal year. A qualified certification shall be assigned  
9 to a county office of education that may not meet its financial  
10 obligations for the current fiscal year or two subsequent fiscal  
11 years. A positive certification shall be assigned to a county office  
12 of education that will meet its financial obligations for the current  
13 fiscal year and subsequent two fiscal years. In accordance with  
14 those standards, the Superintendent may reclassify a certification.  
15 If a county office of education receives a negative certification,  
16 the Superintendent, or his or her designee, may exercise the  
17 authority set forth in subdivision (c) of Section 1630. Copies of  
18 each certification, and of the report containing that certification,  
19 shall be sent to the Superintendent at the time the certification is  
20 submitted to the county board of education. Copies of each  
21 qualified or negative certification and the report containing that  
22 certification shall be sent to the Controller at the time the  
23 certification is submitted to the county board of education.

24 (2) All reports and certifications required under this subdivision  
25 shall be in a format or on forms prescribed by the Superintendent,  
26 and shall be based on standards and criteria for fiscal stability  
27 adopted by the state board pursuant to Section 33127. The reports  
28 and supporting data shall be made available by the county  
29 superintendent to an interested party upon request.

30 (3) This subdivision does not preclude the submission of  
31 additional budgetary or financial reports by the county  
32 superintendent to the county board of education or to the  
33 Superintendent.

34 (4) The county superintendent is not responsible for the fiscal  
35 oversight of the community colleges in the county, however, he  
36 or she may perform financial services on behalf of those  
37 community colleges.

38 (m) If requested, act as agent for the purchase of supplies for  
39 the city and high school districts of his or her county.

(n) For purposes of Section 44421.5, report to the Commission on Teacher Credentialing the identity of a certificated person who knowingly and willingly reports false fiscal expenditure data relative to the conduct of an educational program. This requirement applies only if, in the course of his or her normal duties, the county superintendent discovers information that gives him or her reasonable cause to believe that false fiscal expenditure data relative to the conduct of an educational program has been reported.

SEC. 3. Section 35035 of the Education Code is amended to read:

35035. The superintendent of each school district shall, in addition to other powers and duties granted to or imposed upon him or her:

(a) Be the chief executive officer of the governing board of the district.

(b) Except in a district where the governing board has appointed or designated an employee other than the superintendent, or a deputy, or assistant superintendent, to prepare and submit a budget, prepare and submit to the governing board of the district, at the time it may direct, the budget of the district for the next ensuing school year, and revise and take other action in connection with the budget as the board may desire.

(c) (1) Subject to the approval of the governing board, assign all employees of the district employed in positions requiring certification qualifications, to the positions in which they are to serve. This power to assign includes the power to transfer a teacher from one school to another school at which the teacher is certificated to serve within the district when the superintendent concludes that the transfer is in the best interest of the district.

(2) When making initial teacher assignments pursuant to paragraph (1), the superintendent shall assign teachers ~~on a basis that allows each school in the district to reflect the average teacher experience, which shall include time served as a temporary, probationary, or permanent teacher.~~ *in such a manner that the percentage of teachers in each school who are in their first or second year of teaching shall not exceed the percentage of teachers in the district who are in their first or second year of teaching by more than 10 percentage points. For purposes of this paragraph, the first or second year of teaching shall include time served as a temporary, probationary, or permanent teacher.*

(3) It is the intent of the Legislature to identify federal funds to support teachers in schools ranked in deciles 1 to 3, inclusive, of the Academic Performance Index. It is the intent of the Legislature that these funds support programs designed to enhance professional development and retention, including, but not limited to, the Beginning Teacher Support and Assessment Program, Peer Assistance and Review, mentoring, coaching in the use of data to improve instruction, and common planning time for teams of teachers.

(d) Upon adoption, by the district board, of a district policy concerning transfers of teachers from one school to another school within the district, have authority to transfer teachers consistent with that policy.

(e) Determine that each employee of the district in a position requiring certification qualifications has a valid certificated document registered as required by law authorizing him or her to serve in the position to which he or she is assigned.

(f) Enter into contracts for and on behalf of the district pursuant to Section 17604.

(g) Submit financial and budgetary reports to the governing board as required by Section 42130.

SEC. 4. Section 42605 of the Education Code is amended to read:

42605. (a) (1) Unless otherwise prohibited under federal law or otherwise specified in subdivision (e), for the 2008–09 fiscal year to the 2012–13 fiscal year, inclusive, recipients of funds from the items listed in paragraph (2) may use funding received, pursuant to subdivision (b), from any of these items listed in paragraph (2) that are contained in an annual Budget Act, for any educational purpose:

(2) 6110-104-0001, 6110-105-0001, 6110-108-0001, 6110-122-0001, 6110-123-0001, 6110-124-0001, 6110-137-0001, 6110-144-0001, 6110-150-0001, 6110-151-0001, 6110-156-0001, 6110-181-0001, 6110-188-0001, 6110-189-0001, 6110-190-0001, 6110-193-0001, 6110-195-0001, 6110-198-0001, 6110-204-0001, 6110-208-0001, 6110-209-0001, 6110-211-0001, 6110-227-0001, 6110-228-0001, 6110-232-0001, 6110-240-0001, 6110-242-0001, 6110-243-0001, 6110-244-0001, 6110-245-0001, 6110-246-0001, 6110-247-0001, 6110-248-0001, 6110-260-0001, 6110-265-0001, 6110-267-0001, 6110-268-0001, and 6360-101-0001.

(b) (1) For the 2009–10 fiscal year to the 2012–13 fiscal year, inclusive, the Superintendent or other administering state agency, as appropriate, shall apportion from the amounts provided in the annual Budget Act for the items enumerated in paragraph (2) of subdivision (a), an amount to recipients based on the same relative proportion that the recipient received in the 2008–09 fiscal year for the programs funded through the items enumerated in paragraph (2) of subdivision (a).

(2) This section and Section 42 of Chapter 12 of the Statutes of 2009 do not authorize a school district that receives funding on behalf of a charter school pursuant to Sections 47634.1 and 47651 to redirect this funding for another purpose unless otherwise authorized in law or pursuant to an agreement between a charter school and its chartering authority. Notwithstanding paragraph (1), for the 2008–09 fiscal year to the 2012–13 fiscal year, inclusive, a school district that receives funding on behalf of a charter school pursuant to Sections 47634.1 and 47651 shall continue to distribute the funds to those charter schools based on the relative proportion that the school district distributed in the 2007–08 fiscal year, and shall adjust those amounts to reflect changes in charter school attendance in the district. The amounts allocated shall be adjusted for any greater or lesser amount appropriated for the items enumerated in paragraph (2) of subdivision (a). For a charter school that began operation in the 2008–09 fiscal year, if a school district received funding on behalf of that charter school pursuant to Sections 47634.1 and 47651, the school district shall continue to distribute the funds to that charter school based on the relative proportion that the school district distributed in the 2008–09 fiscal year and shall adjust the amount of those funds to reflect changes in charter school attendance in the district. The amounts allocated shall be adjusted for any greater or lesser amount appropriated for the items enumerated in paragraph (2) of subdivision (a).

(3) Notwithstanding paragraph (1), for the 2008–09 fiscal year to the 2012–13 fiscal year, inclusive, the Superintendent shall apportion from the amounts appropriated by Item 6110-211-0001 of the annual Budget Act, an amount to a charter school in accordance with the per pupil methodology prescribed in subdivision (c) of Section 47634.1.

1 (4) Notwithstanding paragraph (1), for the 2008–09 fiscal year  
2 to the 2012–13 fiscal year, inclusive, the Superintendent shall  
3 apportion from the amounts provided in the annual Budget Act,  
4 an amount to a school district, charter school, and county office  
5 of education based on the same relative proportion that the local  
6 educational agency received in the 2007–08 fiscal year for the  
7 programs funded through the following items contained in the  
8 annual Budget Act: 6110-104-0001, 6110-105-0001,  
9 6110-156-0001, 6110-190-0001, schedule (3) of 6110-193-0001,  
10 6110-198-0001, 6110-232-0001, and schedule (2) of  
11 6110-240-0001.

12 (5) For purposes of paragraph (4) of this subdivision, if a  
13 direct-funded charter school began operation in the 2008–09 fiscal  
14 year, the amount that the charter school was entitled to receive  
15 from the items enumerated in paragraph (4) for the 2008–09 fiscal  
16 year, as certified by the Superintendent in March 2009, is deemed  
17 to have been received in the 2007–08 fiscal year.

18 (c) (1) This section does not obligate the state to refund or repay  
19 reductions made pursuant to this section. A decision by a school  
20 district to reduce funding pursuant to this section for a  
21 state-mandated local program shall constitute a waiver of the  
22 subvention of funds that the school district is otherwise entitled to  
23 pursuant to Section 6 of Article XIII B of the California  
24 Constitution on the amount so reduced.

25 (2) As a condition of receipt of funds, the governing board of  
26 the school district or board of the county office of education, as  
27 appropriate, at a regularly scheduled open public hearing shall take  
28 testimony from the public, discuss, approve or disapprove the  
29 proposed use of funding, and make explicit for each of the budget  
30 items in paragraph (2) of subdivision (a) the purposes for which  
31 the funds will be used.

32 (3) Using the Standardized Account Code Structure reporting  
33 process, a local educational agency shall report expenditures of  
34 funds pursuant to the authority of this section by using the  
35 appropriate function codes to indicate the activities for which these  
36 funds are expended. The department shall collect and provide this  
37 information to the Department of Finance and the appropriate  
38 policy and budget committees of the Legislature by April 15, 2010,  
39 and annually thereafter on April 15 until, and including, April 15,  
40 2014.



(d) For the 2008–09 fiscal year to the 2012–13 fiscal year, inclusive, local education agencies that use the flexibility provision of the section shall be deemed to be in compliance with the program and funding requirements contained in statutory, regulatory, and provisional language, associated with the items enumerated in subdivision (a).

(e) Notwithstanding subdivision (d), the following requirements shall continue to apply:

(1) For Items 6110-105-0001 and 6110-156-0001, the amount authorized for flexibility shall exclude the funding provided for instruction of CalWORKs eligible students pursuant to schedules (2) and (3), and provisions 2 and 4.

(2) (A) Any instructional materials purchased by a local education agency shall be the materials adopted by the state board for kindergarten and grades 1 to 8, inclusive, and for grades 9 to 12, inclusive, the materials purchased shall be aligned with state standards as defined by Section 60605, and shall also meet the reporting and sufficiency requirements contained in Section 60119.

(B) For purposes of this section, “sufficiency” means that each pupil has sufficient textbooks and instructional materials in the four core areas as defined by Section 60119, and that all pupils within the local education agency who are enrolled in the same course shall have identical textbooks and instructional materials, as specified in Section 1240.3.

(3) For Item 6110-195-0001, the item shall exclude moneys that are required to fund awards for teachers that have previously met the requirements necessary to obtain these awards, until the award is paid in full.

(4) For Item 6110-198-0001, a school district or county office of education that operates the child care component of the Cal-SAFE program shall comply with paragraphs (5) and (6) of subdivision (c) of Section 54746.

(f) This section does not invalidate any state law pertaining to teacher credentialing requirements or the functions that require credentials.

SEC. 5. Section 44955 of the Education Code is amended to read:

44955. (a) A permanent employee shall not be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and a

1 probationary employee shall not be deprived of his or her position  
2 for cause other than as specified in Sections 44948 to 44949,  
3 inclusive.

4 (b) Whenever in any school year the average daily attendance  
5 in all of the schools of a district for the first six months in which  
6 school is in session shall have declined below the corresponding  
7 period of either of the previous two school years, whenever the  
8 governing board determines that attendance in a district will decline  
9 in the following year as a result of the termination of an interdistrict  
10 tuition agreement as defined in Section 46304, whenever a  
11 particular kind of service is to be reduced or discontinued not later  
12 than the beginning of the following school year, or whenever the  
13 amendment of state law requires the modification of curriculum,  
14 and if in the opinion of the governing board of the district it shall  
15 have become necessary by reason of any of these conditions to  
16 decrease the number of permanent employees in the district, the  
17 governing board may terminate the services of not more than a  
18 corresponding percentage of the certificated employees of the  
19 district, permanent as well as probationary, at the close of the  
20 school year. Except as otherwise provided by statute, the services  
21 of a permanent employee shall not be terminated under the  
22 provisions of this section while any probationary employee, or any  
23 other employee with less seniority, is retained to render a service  
24 that the permanent employee is certificated and competent to  
25 render.

26 In computing a decline in average daily attendance for purposes  
27 of this section for a newly formed or reorganized school district,  
28 each school of the district shall be deemed to have been a school  
29 of the newly formed or reorganized district for both of the two  
30 previous school years.

31 As between employees who first rendered paid service to the  
32 district on the same date, the governing board shall determine the  
33 order of termination solely on the basis of needs of the district and  
34 the pupils of the district. Upon the request of any employee whose  
35 order of termination is so determined, the governing board shall  
36 furnish in writing no later than five days prior to the  
37 commencement of the hearing held in accordance with Section  
38 44949, a statement of the specific criteria used in determining the  
39 order of termination and the application of the criteria in ranking  
40 each employee relative to the other employees in the group. This

1 requirement that the governing board provide, on request, a written  
2 statement of reasons for determining the order of termination shall  
3 not be interpreted to give affected employees any legal right or  
4 interest that would not exist without such a requirement.

5 (c) Notice of the termination of services shall be given before  
6 the 15th of May in the manner prescribed in Section 44949, and  
7 services of these employees shall be terminated in the inverse of  
8 the order in which they were employed, as determined by the board  
9 in accordance with the provisions of Sections 44844 and 44845.  
10 In the event that a permanent or probationary employee is not  
11 given the notices and a right to a hearing as provided for in Section  
12 44949, he or she shall be deemed reemployed for the ensuing  
13 school year.

14 The governing board shall make assignments and reassignments  
15 in such a manner that employees shall be retained to render any  
16 service that their seniority and qualifications entitle them to render.  
17 However, prior to assigning or reassigning any certificated  
18 employee to teach a subject that he or she has not previously taught,  
19 and for which he or she does not have a teaching credential or that  
20 is not within the employee's major area of postsecondary study or  
21 the equivalent thereof, the governing board shall require the  
22 employee to pass a subject matter competency test in the  
23 appropriate subject.

24 (d) (1) Notwithstanding subdivision (b), for purposes of  
25 maintaining stability of ~~classroom teachers~~ *certificated employees*  
26 *who provide instruction in a classroom* at schools in deciles 1 to  
27 3, inclusive, of the Academic Performance Index, the proportion  
28 of ~~classroom teachers~~ *certificated employees who provide*  
29 *instruction in a classroom* terminated at those schools in any given  
30 year as part of a reduction in the number of employees pursuant  
31 to this section shall be no greater than the proportion of ~~classroom~~  
32 ~~teachers~~ *certificated employees who provide instruction in a*  
33 *classroom* terminated in the school district as a whole. This limit  
34 shall also apply to ~~classroom teacher reductions~~ *reductions of*  
35 *certificated employees who provide instruction in a classroom* at  
36 schools on the list of the persistently lowest-achieving schools  
37 approved by the state board, provided those schools have put in  
38 place ~~classroom teachers~~ *certificated employees who provide*  
39 *instruction in a classroom* as part of a school reform plan approved  
40 by the governing board.

~~(2) The Superintendent shall institute fiscal penalties for noncompliance with paragraph (1), which may include, but not be limited to, withholding a percentage of the school district's apportionment.~~

*(2) The Superintendent shall require local governing boards that do not comply with paragraph (1) to reinstate the certificated employee or certificated employees terminated in violation of the limit. Certificated employees reinstated shall be returned to employment at the school or schools from which they were terminated. Local governing boards shall not make further reductions in force in certificated employees at those schools for the school year in which the terminations in violation of the limit would have been in effect, and shall not make reductions in certificated employees at other schoolsites in the district in order to compensate for the reinstatements.*

(3) In addition to the requirements prescribed in paragraph (1), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(A) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

(B) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws as it applies to pupils and to certificated employees.

SEC. 6. Section 44956 of the Education Code is amended to read:

44956. ~~(a)~~—Any permanent employee whose services have been terminated as provided in Section 44955 shall have the following rights:

~~(1)~~

*(a) For the period of 39 months from the date of such termination, any employee who in the meantime has not attained the age of 65 years shall have the preferred right to reappointment, in the order of original employment as determined by the board in accordance with the provisions of Sections 44831 to 44855, inclusive, if the number of employees is increased or the*

discontinued service is reestablished, with no requirements that were not imposed upon other employees who continued in service; provided, that no probationary or other employee with less seniority shall be employed to render a service which said employee is certificated and competent to render. However, prior to reappointing any employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee's major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

~~(2)~~

(b) The aforesaid right to reappointment may be waived by the employee, without prejudice, for not more than one school year, unless the board extends this right, but such waiver shall not deprive the employee of his right to subsequent offers of reappointment.

~~(3) Notwithstanding paragraph (1)~~

(c) *Notwithstanding subdivision (a)*, a school district may deviate from reappointing a certificated employee in order of seniority for any of the following reasons:

~~(A)~~

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the employee has special training and experience necessary to teach that course or course of study, or to provide those services, which others with more seniority do not possess.

~~(B)~~

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws, as it applies to pupils and to certificated employees.

~~(C)~~

(3) For purposes of furthering improvements in pupil achievement at schools in deciles 1 to 3, inclusive, of the Academic Performance Index that have put in place ~~teaching staff~~ *certificated employees who provide instruction in a classroom* as part of a school reform plan approved by the governing board of the school district. Governing boards may reappoint ~~teaching staff~~ *certificated*

1 *employees who provide instruction in a classroom*, regardless of  
2 seniority, at the schools described in this subparagraph in a manner  
3 that supports the school reform plan. Governing boards may also  
4 use this authority to reappoint ~~teaching staff~~ *certificated employees*  
5 *who provide instruction in a classroom* at schools on the list of  
6 the persistently lowest-achieving schools approved by the state  
7 board.

8 ~~(4)~~

9 (d) As to any such employee who is reappointed, the period of  
10 his or her absence shall be treated as a leave of absence and shall  
11 not be considered as a break in the continuity of his or her service,  
12 he or she shall retain the classification and order of employment  
13 he or she had when his or her services were terminated, and credit  
14 for prior service under any state or district retirement system shall  
15 not be affected by such termination, but the period of his or her  
16 absence shall not count as a part of the service required for  
17 retirement.

18 ~~(5)~~

19 (e) During the period of his or her preferred right to  
20 reappointment, any such employee shall, in the order of original  
21 employment, be offered prior opportunity for substitute service  
22 during the absence of any other employee who has been granted  
23 a leave of absence or who is temporarily absent from duty;  
24 provided, that his or her services may be terminated upon the return  
25 to duty of said other employee and that said substitute service shall  
26 not affect the retention of his or her previous classification and  
27 rights. If, in any school year the employee serves as a substitute  
28 in any position requiring certification for any 21 days or more  
29 within a period of 60 schooldays, the compensation the employee  
30 receives for substitute service in that 60-day period, including his  
31 or her first 20 days of substitute service, shall be not less than the  
32 amount the employee would receive if he or she were being  
33 reappointed.

34 ~~(6)~~

35 (f) During the period of the employee's preferred right to  
36 reappointment, the governing board of the district, if it is also the  
37 governing board of one or more other districts, may assign him or  
38 her to service, which he or she is certificated and competent to  
39 render, in said other district or districts; provided, that the  
40 compensation he or she receives therefor may in the discretion of

1 the governing board be the same as he or she would have received  
2 had he or she been serving in the district from which his or her  
3 services were terminated, that his or her service in the said other  
4 district or districts shall be counted toward the period required for  
5 both state and local retirement, as defined by Section 22102, as  
6 though rendered in the district from which his or her services were  
7 terminated, and that no permanent employee in said other district  
8 or districts shall be displaced by him or her.

9 It is the intent of this ~~subdivision~~ *section* that the employees of  
10 a school district, the governing board of which is also the governing  
11 board of one or more other school districts, shall not be at a  
12 disadvantage as compared with employees of a unified school  
13 district.

14 ~~(7)~~

15 (g) At any time prior to the completion of one year after his or  
16 her return to service, he or she may continue or make up, with  
17 interest, his or her own contributions to any state or district  
18 retirement system, for the period of his or her absence, but it shall  
19 not be obligatory on state or district to match such contributions.

20 ~~(8)~~

21 (h) Should he or she become disabled or reach retirement age  
22 at any time before his or her return to service, he or she shall  
23 receive, in any state or district retirement system of which he or  
24 she was a member, all benefits to which he or she would have been  
25 entitled had such event occurred at the time of his or her  
26 termination of service, plus any benefits he or she may have  
27 qualified for thereafter, as though still employed.

28 SEC. 7. If the Commission on State Mandates determines that  
29 this act contains costs mandated by the state, reimbursement to  
30 local agencies and school districts for those costs shall be made  
31 pursuant to Part 7 (commencing with Section 17500) of Division  
32 4 of Title 2 of the Government Code.