

AMENDED IN ASSEMBLY AUGUST 30, 2010

AMENDED IN ASSEMBLY AUGUST 18, 2010

AMENDED IN ASSEMBLY AUGUST 2, 2010

AMENDED IN ASSEMBLY JUNE 22, 2010

AMENDED IN ASSEMBLY JUNE 14, 2010

AMENDED IN SENATE APRIL 29, 2010

SENATE BILL

No. 1285

Introduced by Senator Steinberg

February 19, 2010

An act to amend ~~Section 44955~~ Sections 44949, 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 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 classroom teachers, as defined, are subject to notice and layoffs pursuant to these provisions, that the proportion of classroom teachers terminated at schools in deciles 1 to 3, inclusive, of the Academic Performance Index in any given year as part of a reduction in the number of employees pursuant to these provisions be no greater than the proportion of classroom teachers noticed and, when applicable, terminated, respectively, in the school district as a whole.

(2) Existing law requires, when a reduction in the number of certificated employees employed by a school district is authorized for specified reasons, the notice of the termination of the services of an employee in the subsequent school year be given by the governing board to the employee, in a prescribed manner, before May 15. Existing law requires the superintendent of the district, prior to March 15 and before an employee is given the described notice, to give written notice to the governing board and the employee that it has been recommended that the notice be given to the employee, and stating the reasons therefor. Existing law authorizes an employee who is given this notice to request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. Existing law requires that an administrative law judge conduct this hearing, and issue a proposed decision to the governing board containing certain findings of fact and a determination as to the sufficiency of cause for the termination.

This bill would require that this determination also include a determination as to whether the notices of termination issued at schools in deciles 1 to 3, inclusive, of the Academic Performance Index violate the aforementioned limit on terminations of classroom teachers.

~~(1) 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.~~

~~This bill would provide that this exception relates to both pupils and certificated employees. The bill also would state the intent of the Legislature to specify criteria and conditions for identifying schools analogous to the schools identified in the Reed v. LAUSD court order~~

~~in which a school district may deviate from seniority-based layoffs for the purposes of ensuring compliance with constitutional requirements relating to equal protection of the laws. The bill also would state the intent of the Legislature to require that districts with schools that meet those criteria and conditions ensure that the proportion of layoffs affecting certificated employees in those schools is no greater than the district average.~~

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

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 equal*
4 *educational opportunity.*

5 (b) *The Legislature finds that paragraph (2) of subdivision (d)*
6 *of Section 44955 of the Education Code provides that, for purposes*
7 *of a reduction in force, school districts may deviate from*
8 *terminating a certificated employee in order of seniority in order*
9 *to maintain or achieve compliance with the constitutional*
10 *guarantee of equal protection of the laws. It is therefore the intent*
11 *of the Legislature that school districts utilize this authority to*
12 *prevent disparate impacts of teacher layoffs on pupils' rights to*
13 *education.*

14 SEC. 2. *Section 44949 of the Education Code is amended to*
15 *read:*

16 44949. (a) *No later than March 15 and before an employee is*
17 *given notice by the governing board that his or her services will*
18 *not be required for the ensuing year for the reasons specified in*
19 *Section 44955, the governing board and the employee shall be*
20 *given written notice by the superintendent of the district or his or*
21 *her designee, or in the case of a district which has no*
22 *superintendent by the clerk or secretary of the governing board,*
23 *that it has been recommended that the notice be given to the*
24 *employee, and stating the reasons therefor.*

25 *Until the employee has requested a hearing as provided in*
26 *subdivision (b) or has waived his or her right to a hearing, the*
27 *notice and the reasons therefor shall be confidential and shall not*
28 *be divulged by any person, except as may be necessary in the*

1 performance of duties. However, the violation of this requirement
2 of confidentiality, in and of itself, shall not in any manner be
3 construed as affecting the validity of any hearing conducted
4 pursuant to this section.

5 (b) The employee may request a hearing to determine if there
6 is cause for not reemploying him or her for the ensuing year. A
7 request for a hearing shall be in writing and shall be delivered to
8 the person who sent the notice pursuant to subdivision (a), on or
9 before a date specified in that subdivision, which shall not be less
10 than seven days after the date on which the notice is served upon
11 the employee. If an employee fails to request a hearing on or before
12 the date specified, his or her failure to do so shall constitute his or
13 her waiver of his or her right to a hearing. The notice provided for
14 in subdivision (a) shall advise the employee of the provisions of
15 this subdivision.

16 (c) In the event a hearing is requested by the employee, the
17 proceeding shall be conducted and a decision made in accordance
18 with Chapter 5 (commencing with Section 11500) of Part 1 of
19 Division 3 of Title 2 of the Government Code and the governing
20 board shall have all the power granted to an agency therein, except
21 that all of the following shall apply:

22 (1) The respondent shall file his or her notice of defense, if any,
23 within five days after service upon him or her of the accusation
24 and he or she shall be notified of this five-day period for filing in
25 the accusation.

26 (2) The discovery authorized by Section 11507.6 of the
27 Government Code shall be available only if request is made
28 therefor within 15 days after service of the accusation, and the
29 notice required by Section 11505 of the Government Code shall
30 so indicate.

31 (3) The hearing shall be conducted by an administrative law
32 judge who shall prepare a proposed decision, containing findings
33 of fact and a determination as to whether the charges sustained by
34 the evidence are related to the welfare of the schools and the pupils
35 thereof. The proposed decision shall be prepared for the governing
36 board and shall contain a determination as to the sufficiency of
37 the cause, *including a determination of whether the proportion of*
38 *classroom teachers noticed at the employee's schoolsite, for*
39 *schools in deciles 1 to 3, inclusive, of the most recently published*
40 *rankings of all public schools based on the Academic Performance*

Index, pursuant to subdivision (a) of Section 52056, exceeds the proportion of classroom teachers noticed in the school district as a whole in violation of paragraph (1) of subdivision (d) of Section 44955 and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board. Nonsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. All expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board from the district funds.

The board may adopt from time to time such rules and procedures not inconsistent with provisions of this section as may be necessary to effectuate this section.

(d) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee.

(e) If after request for hearing pursuant to subdivision (b) any continuance is granted pursuant to Section 11524 of the Government Code, the dates prescribed in subdivision (c) ~~which~~ *that* occur on or after the date of granting the continuance and the date prescribed in subdivision (c) of Section 44955 which occurs after the date of granting the continuance shall be extended for a period of time equal to the continuance.

SEC. 3. Section 44955 of the Education Code is amended to read:

44955. (a) ~~No~~ 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 ~~no~~ a probationary employee shall *not* be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.

(b) Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, whenever the governing board determines that attendance in a district will decline in the following year as a result of the termination of an interdistrict tuition agreement as defined in Section 46304, whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, or whenever the amendment of state law requires the modification of curriculum, ~~and when~~ *if* in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of ~~no a permanent employee may~~ *shall not* be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service ~~which said that the~~ permanent employee is certificated and competent to render.

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

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and ~~the students thereof~~ *pupils of the district*. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. *For employees assigned to schools ranked in deciles 1 to 3, inclusive, of the most recently published rankings of all public schools based on the Academic Performance Index, pursuant*

to subdivision (a) of Section 52056, the statement of specific criteria shall include data supporting the determination of whether the notices issued satisfy paragraph (1) of subdivision (d) of this section. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.

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

The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service ~~which~~ that their seniority and qualifications entitle them to render. However, prior to assigning or reassigning any certificated employee to teach a subject ~~which~~ that he or she has not previously taught, and for which he or she does not have a teaching credential or ~~which~~ that 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.

(d) (1) Notwithstanding subdivision (b), for purposes of maintaining stability of classroom teachers at schools in deciles 1 to 3, inclusive, of the most recently published rankings of all public schools based on the Academic Performance Index, pursuant to subdivision (a) of Section 52056, the proportion of classroom teachers noticed and, when applicable, terminated at those schools in any given year as part of a reduction in the number of employees pursuant to this section shall be no greater than the proportion, rounded to the nearest whole number of classroom teachers, of classroom teachers noticed and, when applicable, terminated, respectively, in the school district as a whole.

(2) For purposes of paragraph (1), the term "classroom teacher" means both certificated employees whose primary

responsibility is to provide classroom instruction and certificated employees who provide instructional support to those employees. Certificated employees who provide instructional support to certificated employees providing classroom instruction include, but are not necessarily limited to, all of the following:

(A) Resource teachers.

(B) Mentor teachers.

(C) Content specialists.

(D) Instructional coaches.

(E) Special education teachers and related special education specialists.

(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:

(1)

(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.

(2)

(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. 4. 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 that the~~ employee is certificated and competent to render. However, prior to reappointing any employee to teach a subject ~~which that~~ he or she has not previously taught, and for which he or she does not have a teaching credential or ~~which that~~ 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 *or her* right to subsequent offers of reappointment.

(3)

~~(c) Notwithstanding paragraph (1) subdivision (a), a school district may deviate from reappointing a certificated employee in order of seniority for either 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.*

(4)

(d) As to any such employee who is reappointed, the period of his *or her* absence shall be treated as a leave of absence and shall not be considered as a break in the continuity of his *or her* service, he *or she* shall retain the classification and order of employment he *or she* had when his *or her* services were terminated, and credit for prior service under any state or district retirement system shall not be affected by such termination, but the period of his *or her*

1 absence shall not count as a part of the service required for
2 retirement.

3 (5)

4 (e) During the period of his *or her* preferred right to
5 reappointment, any such employee shall, in the order of original
6 employment, be offered prior opportunity for substitute service
7 during the absence of any other employee who has been granted
8 a leave of absence or who is temporarily absent from duty;
9 provided, that his *or her* services may be terminated upon the
10 return to duty of ~~said the~~ other employee and that ~~said the~~ substitute
11 service shall not affect the retention of his *or her* previous
12 classification and rights. If, in any school year the employee serves
13 as a substitute in any position requiring certification for any 21
14 days or more within a period of 60 schooldays, the compensation
15 the employee receives for substitute service in that 60-day period,
16 including his or her first 20 days of substitute service, shall be not
17 less than the amount the employee would receive if he or she were
18 being reappointed.

19 (6)

20 (f) During the period of the employee's preferred right to
21 reappointment, the governing board of the district, if it is also the
22 governing board of one or more other districts, may assign him *or*
23 *her* to service, which he *or she* is certificated and competent to
24 render, in ~~said the~~ other district or districts; provided, that the
25 compensation he *or she* receives therefor may in the discretion of
26 the governing board be the same as he *or she* would have received
27 had he *or she* been serving in the district from which his *or her*
28 services were terminated, that his *or her* service in the ~~said~~ other
29 district or districts shall be counted toward the period required for
30 both state and local retirement, as defined by Section 22102, as
31 though rendered in the district from which his *or her* services were
32 terminated, and that ~~no a~~ permanent employee in ~~said the~~ other
33 district or districts shall *not* be displaced by him *or her*.

34 It is the intent of this ~~subsection~~ section that the employees of a
35 school district, the governing board of which is also the governing
36 board of one or more other school districts, shall not be at a
37 disadvantage as compared with employees of a unified school
38 district.

39 (7)

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

(8)

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

~~SECTION 1. (a) The Legislature finds and declares that every California child has a constitutional right, under the equal protection clause of the California Constitution, to equal educational opportunity.~~

~~(b) The Legislature finds that paragraph (2) of subdivision (d) of Section 44955 of the Education Code provides that, for purposes of a reduction in force, school districts may deviate from terminating a certificated employee in order of seniority in order to maintain or achieve compliance with the constitutional guarantee of equal protection of the laws. It is therefore the intent of the Legislature that school districts utilize this authority to prevent disparate impacts of teacher layoffs on pupils' rights to education.~~

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

~~(b) Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, whenever the governing board determines that attendance in a district will decline in the following year as a result of the termination of an interdistrict~~

~~tuition agreement as defined in Section 46304, whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, or whenever the amendment of state law requires the modification of curriculum, and if in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of a permanent employee shall not be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service that the permanent employee is certificated and competent to render.~~

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

~~As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the pupils of the district. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.~~

~~(c) Notice of the termination of services shall be given before the 15th of May in the manner prescribed in Section 44949, and services of these employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 44844 and 44845.~~

1 In the event that a permanent or probationary employee is not
2 given the notices and a right to a hearing as provided for in Section
3 44949, he or she shall be deemed reemployed for the ensuing
4 school year.

5 The governing board shall make assignments and reassignments
6 in such a manner that employees shall be retained to render any
7 service that their seniority and qualifications entitle them to render.
8 However, prior to assigning or reassigning any certificated
9 employee to teach a subject that he or she has not previously taught,
10 and for which he or she does not have a teaching credential or that
11 is not within the employee's major area of postsecondary study or
12 the equivalent thereof, the governing board shall require the
13 employee to pass a subject matter competency test in the
14 appropriate subject.

15 (d) (1) Notwithstanding subdivision (b), a school district may
16 deviate from terminating a certificated employee in order of
17 seniority for either of the following reasons:

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

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

28 (2) It is the intent of the Legislature to specify criteria and
29 conditions for identifying schools analogous to the schools
30 identified in the Reed v. LAUSD (Los Angeles County Superior
31 Court Case BC432420) court order in which a school district may
32 deviate from seniority-based layoffs for the purposes of ensuring
33 compliance with constitutional requirements relating to equal
34 protection of the laws. It is further the intent of the Legislature to
35 require that districts with schools that meet those criteria and
36 conditions ensure that the proportion of layoffs affecting
37 certificated employees in those schools is no greater than the
38 district average.