

AMENDED IN ASSEMBLY MARCH 22, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2307

Introduced by Assembly Member Butler

February 24, 2012

An act to amend Sections 45101~~and~~, 45113, 88001, and 88013 of the Education Code, relating to classified school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 2307, as amended, Butler. Classified school employees.

Existing law requires the governing board of a school district to employ persons for positions not requiring certification qualifications and *the governing board of a community college district to employ persons for positions that are not academic positions*. Existing law requires *the governing board of a school district and the governing board of a community college district* to classify those employees and positions and requires that they be known as the classified service. Existing law requires the governing board of a school district *and the governing board of a community college district* to prescribe written rules and regulations governing the personnel management of the classified service whereby classified employees are designated as permanent employees of the district after serving a prescribed period of probation that is prohibited from exceeding one year. Existing law defines a permanent classified employee for purposes of provisions governing the classified service.

This bill would change the definition of “permanent employee.” The bill would define a permanent employee to mean an employee who has served the prescribed period of probation and would provide that a permanent employee remains a permanent employee of the ~~school~~ *public*

school employer or community college district when the employee is moved to another classification. The bill would provide that if a permanent employee is placed on a reemployment list after his or her services are terminated and the employee is subsequently reemployed, the employee continues being a permanent employee of the school district *or community college district*. The bill also would provide that a permanent employee who passes *the prescribed period of* probation remains a permanent employee of the school district *or community college district* when the employee moves to another classification.

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. Section 45101 of the Education Code is amended
- 2 to read:
- 3 45101. Definitions as used in this chapter:
- 4 (a) “Classification” means that each position in the classified
- 5 service shall have a designated title, a regular minimum number
- 6 of assigned hours per day, days per week, and months per year, a
- 7 specific statement of the duties required to be performed by the
- 8 employees in the position, and the regular monthly salary ranges
- 9 for each position.
- 10 (b) “Permanent” as used in the phrase “permanent employee”
- 11 means an employee who has served the prescribed period of
- 12 probation. A permanent employee remains a permanent employee
- 13 of the ~~district~~ *public school employer* when the employee is moved
- 14 to another classification. A permanent employee who is placed on
- 15 a reemployment list and is subsequently reemployed ~~in~~ *by* the same
- 16 ~~school district~~ *public school employer* that placed him or her on
- 17 the reemployment list continues being a permanent employee when
- 18 reemployed *regardless of the classification in which he or she is*
- 19 *placed when reemployed.*
- 20 (c) “Regular” as used in the phrase “regular classified employee”
- 21 or any similar phrase, refers to a classified employee who has
- 22 probationary or permanent status.
- 23 (d) “Demotion” means assignment to an inferior position or
- 24 status, without the employee’s written voluntary consent.
- 25 (e) “Disciplinary action” includes any action whereby an
- 26 employee is deprived of any classification or any incident of any

1 classification in which he has permanence, including dismissal,
2 suspension, demotion, or any reassignment, without his voluntary
3 consent, except a layoff for lack of work or lack of funds.

4 (f) "Reclassification" means the upgrading of a position to a
5 higher classification as a result of the gradual increase of the duties
6 being performed by the incumbent in such position.

7 (g) "Layoff for lack of funds or layoff for lack of work" includes
8 any reduction in hours of employment or assignment to a class or
9 grade lower than that in which the employee has permanence,
10 voluntarily consented to by the employee, in order to avoid
11 interruption of employment by layoff.

12 (h) "Cause" relating to disciplinary actions against classified
13 employees means those grounds for discipline, or offenses,
14 enumerated in the law or the written rules of a public school
15 employer. Disciplinary action shall not be maintained for any
16 "cause" other than as defined herein.

17 This section shall not apply to school districts to which the
18 provisions of Article 6 (commencing with Section 45240) of this
19 chapter are applicable.

20 This section shall not apply to any school district that, during
21 the 1973-74 school year, had an average daily attendance of
22 100,000 or more.

23 SEC. 2. Section 45113 of the Education Code is amended to
24 read:

25 45113. (a) The governing board of a school district shall
26 prescribe written rules and regulations, governing the personnel
27 management of the classified service, which shall be printed and
28 made available to employees in the classified service, the public,
29 and those concerned with the administration of this section,
30 whereby these employees are designated as permanent employees
31 of the district after serving a prescribed period of probation ~~which~~
32 *that* shall not exceed one year. A permanent employee who passes
33 *the prescribed period of* probation shall remain a permanent
34 employee of the school district when the employee moves to
35 another classification. A permanent employee who accepts a
36 promotion and fails to complete the probationary period for that
37 promotional position shall be employed in the classification from
38 which he or she was promoted.

39 (b) Any employee designated as a permanent employee shall
40 be subject to disciplinary action only for cause as prescribed by

1 rule or regulation of the governing board, but the governing board’s
2 determination of the sufficiency of the cause for disciplinary action
3 shall be conclusive.

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

14 (d) Disciplinary action shall not be taken for any cause that
15 arose before the employee’s becoming permanent, or for any cause
16 that arose more than two years preceding the date of the filing of
17 the notice of cause unless the cause was concealed or not disclosed
18 by the employee when it could be reasonably assumed that the
19 employee should have disclosed the facts to the employing district.

20 (e) This section does not prohibit the governing board, pursuant
21 to the terms of an agreement with an employee organization under
22 Chapter 10.7 (commencing with Section 3540) of Division 4 of
23 Title 1 of the Government Code, from delegating its authority to
24 determine whether sufficient cause exists for disciplinary action
25 against classified employees, excluding peace officers as defined
26 in Section 830.32 of the Penal Code, to an impartial third party
27 hearing officer. However, the governing board shall retain authority
28 to review the determination under the standards set forth in Section
29 1286.2 of the Code of Civil Procedure.

30 (f) This section shall apply only to districts not incorporating
31 the merit system as outlined in Article 6 (commencing with Section
32 45240) of this chapter.

33 *SEC. 3. Section 88001 of the Education Code is amended to*
34 *read:*

35 88001. As used in this chapter the following terms mean:

36 (a) “Classification” means that each position in the classified
37 service shall have a designated title, a regular minimum number
38 of assigned hours per day, days per week, and months per year, a
39 specific statement of the duties required to be performed by the

1 employees in each such position, and the regular monthly salary
2 ranges for each such position.

3 (b) “Permanent,” as used in the phrase “permanent employee,”
4 ~~includes tenure in the classification in which the employee passed~~
5 ~~the required probationary period and includes all of the incidents~~
6 ~~of that classification~~ means an employee who has served the
7 prescribed period of probation. A permanent employee remains a
8 permanent employee of the community college district when the
9 employee is moved to another classification. A permanent employee
10 who is placed on a reemployment list and is subsequently
11 reemployed by the same district that placed him or her on the
12 reemployment list continues being a permanent employee when
13 reemployed regardless of the classification in which he or she is
14 placed when reemployed.

15 (c) “Regular,” as used in the phrase “regular classified
16 employee,” or any similar phrase, refers to a classified employee
17 who has probationary or permanent status.

18 (d) “Demotion” means assignment to an inferior position or
19 status without the employee’s written voluntary consent.

20 (e) “Disciplinary action” includes any action whereby an
21 employee is deprived of any classification or any incident of any
22 classification in which he or she has permanence, including
23 dismissal, suspension, demotion, or any reassignment, without his
24 or her voluntary consent, except a layoff for lack of work or lack
25 of funds.

26 (f) “Reclassification” means the upgrading of a position to a
27 higher classification as a result of the gradual increase of the duties
28 being performed by the incumbent in that position.

29 (g) “Layoff for lack of funds or layoff for lack of work” includes
30 any reduction in hours of employment or assignment to a class or
31 grade lower than that in which the employee has permanence,
32 voluntarily consented to by the employee, in order to avoid
33 interruption of employment by layoff.

34 (h) “Cause,” relating to disciplinary actions against classified
35 employees, means those grounds for discipline or offenses
36 enumerated in the law or the written rules of a community college
37 employer. ~~No disciplinary action may~~ *Disciplinary action shall*
38 *not* be maintained for any “cause” other than as defined herein.

39 This section shall not apply to districts to which Article 3
40 (commencing with Section 88060) is applicable.

1 This section shall not apply to any district ~~which~~ *that*, during
2 the 1973–74 college year, had an average daily attendance of
3 100,000 or more.

4 *SEC. 4. Section 88013 of the Education Code is amended to*
5 *read:*

6 88013. (a) The governing board of a community college district
7 shall prescribe written rules and regulations, governing the
8 personnel management of the classified service, which shall be
9 printed and made available to employees in the classified service,
10 the public, and those concerned with the administration of this
11 section, whereby these employees are, except as provided in
12 Section 72411, designated as permanent employees of the district
13 after serving a prescribed period of probation ~~which~~ *that* shall not
14 exceed one year. *A permanent employee who passes the prescribed*
15 *period of probation shall remain a permanent employee of the*
16 *community college district when the employee moves to another*
17 *classification. A permanent employee who accepts a promotion*
18 *and fails to complete the probationary period for that promotional*
19 *classification, shall be employed in the position from which he or*
20 *she was promoted.*

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

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

36 (d) ~~No disciplinary~~ *Disciplinary* action shall *not* be taken for
37 any cause that arose ~~prior to~~ *before* the employee's becoming
38 permanent, or for any cause that arose more than two years
39 preceding the date of the filing of the notice of cause, unless the
40 cause was concealed or not disclosed by the employee when it

1 could be reasonably assumed that the employee should have
2 disclosed the facts to the employing district.

3 (e) ~~Nothing in this section shall be construed to~~ *This section*
4 *does not* prohibit the governing board, pursuant to the terms of an
5 agreement with an employee organization under Chapter 10.7
6 (commencing with Section 3540) of Division 4 of Title 1 of the
7 Government Code, from delegating its authority to determine
8 whether sufficient cause exists for disciplinary action against
9 classified employees, excluding peace officers as defined in Section
10 830.32 of the Penal Code, to an impartial third party hearing
11 officer. However, the governing board shall retain authority to
12 review the determination under the standards set forth in Section
13 1286.2 of the Code of Civil Procedure.

14 (f) This section shall apply only to districts not incorporating
15 the merit system as outlined in Article 3 (commencing with Section
16 88060).