

AMENDED IN SENATE APRIL 26, 2012

AMENDED IN SENATE MARCH 27, 2012

SENATE BILL

No. 1530

Introduced by Senator Padilla

February 24, 2012

An act to amend Sections 44936, ~~44938~~, 44939, 44940, and 44944 of the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 1530, as amended, Padilla. School employees: dismissal, suspension, and leave of absence procedures.

(1) Under existing law, a permanent school employee is prohibited from being dismissed, except for one or more of certain enumerated causes, including for immoral or unprofessional conduct and unsatisfactory performance. Upon a charging that there exists cause for the dismissal or suspension of a permanent employee, existing law authorizes the governing board of a school district to give notice to the employee of its intention to dismiss or suspend the employee, as specified. Existing law prohibits the governing board of a school district from giving notice of dismissal or suspension of a permanent employee between May 15 and September 15 of any year.

This bill would except from that prohibition of giving notice between those dates, proceedings where the charges involve specified offenses.

~~(2) Existing law prohibits the governing board of any school district from acting upon charges of unprofessional conduct or unsatisfactory performance against an employee unless the employee is given written notice of the unprofessional conduct or unsatisfactory performance, as provided.~~

~~This bill would delete the provision that prohibits the governing board from acting upon charges of unprofessional conduct, as specified.~~

~~(3)~~

(2) Existing law authorizes the governing board of a school district to immediately suspend a permanent employee under specified conditions, including immoral conduct, and give the employee notice of the suspension, as specified.

This bill would include *serious or egregious* unprofessional conduct within the conditions that a governing board may immediately suspend a permanent employee.

~~(4)~~

(3) Existing law provides that a certificated employee may be charged with a mandatory leave of absence offense for certain specified sex offenses or controlled substance offenses with the exception of marijuana, mescaline, peyote, or tetrahydrocannabinols. Existing law also provides that a certificated employee may be charged with an optional leave of absence offense for certain offenses, including controlled substance offenses, as specified, with the exception of marijuana, mescaline, peyote, or tetrahydrocannabinols. Existing law requires the governing board of a school district to immediately place a certificated employee on compulsory leave of absence if the employee is charged with a mandatory leave of absence offense.

This bill would remove marijuana, mescaline, peyote, and tetrahydrocannabinols as exceptions to the controlled substance offenses for which a certificated employee may be charged with a mandatory leave of absence offense or an optional leave of absence offense.

Because this bill would increase the number of employees subject to immediate placement on compulsory leave of absence, thereby increasing the duties of school districts, the bill would impose a state-mandated local program.

~~(5)~~

(4) Existing law requires that a requested hearing on the dismissal or suspension of a permanent employee be conducted by a Commission on Professional Competence, as specified, and provides that the decision of the commission is deemed to be the final decision of the governing board of a school district. Existing law prohibits testimony from being given and evidence from being introduced relating to matters that occurred more than 4 years prior to the filing of the notice, and prohibits a decision relating to the dismissal or suspension of an employee from being made based on charges or evidence relating to matters that

occurred more than 4 years before the filing of the notice of charges for the dismissal or suspension of the employee.

This bill would ~~require the Commission on Professional Competence, for hearings on the dismissal or suspension of a permanent employee that involve certain sex offenses, controlled substance offenses, or child abuse offenses, as specified, to consist of~~ *require these hearings to be conducted solely by an administrative law judge of the Office of Administrative Hearings and would provide that the decision of the ~~commission~~ administrative law judge related to these specified offenses would be advisory in nature to the governing board, and require the final decision regarding the discipline of the employee to be determined by action of the governing board of the school district, as specified.* The bill would *require the governing board, before making its final determination, to allow the employee to submit a written statement or response or, at the election of the governing board, an oral statement concerning the disciplinary action, and would require the governing board's final determination to be subject to review and appeal, as specified.* The bill also would exempt hearings that involve these specified offenses from the prohibition on giving testimony and introducing evidence relating to matters that occurred more than 4 years before the date of the filing of the notice, and would, for hearings that involve the specified offenses, permit a decision relating to the dismissal or suspension of an employee to be made based on charges or evidence related to matters occurring more than 4 years before the date of the filing of the notice of charges for the dismissal or suspension of the employee.

~~(6)~~

(5) This bill also would make ~~nonsubstantive~~ *nonsubstantive* and conforming changes to these provisions.

~~(7)~~

(6) 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. Section 44936 of the Education Code is amended
2 to read:

3 44936. (a) The notice of dismissal or suspension in a
4 proceeding initiated pursuant to Section 44934 shall not be given
5 between May 15 and September 15, ~~except in proceedings where~~
6 ~~the charges involve any offense as defined in Sections 44010 and~~
7 ~~44011 of this code, and Sections 11165.2 to 11165.6, inclusive,~~
8 ~~of the Penal Code.~~ The notice shall be in writing and be served
9 upon the employee personally or by United States registered mail
10 addressed to him or her at the employee's last known address. A
11 copy of the charges filed, containing the information required by
12 Section 11503 of the Government Code, together with a copy of
13 the provisions of this article, shall be attached to the notice.

14 (b) *The notice of dismissal or suspension in a proceeding*
15 *initiated pursuant to charges described in Section 44939 may be*
16 *given at any time during the calendar year. This subdivision is*
17 *intended to codify the holding of Board of Education v. Commission*
18 *on Professional Competence (1976) 61 Cal.App.3d 664.*

19 ~~SEC. 2. Section 44938 of the Education Code is amended to~~
20 ~~read:~~

21 ~~44938. (a) The governing board of a school district shall not~~
22 ~~act upon any charges of unsatisfactory~~
23 ~~performance unless it acts in accordance with the provisions of~~
24 ~~paragraph (1) or (2):~~

25 ~~(1) At least 90 calendar days before the date of the filing, the~~
26 ~~governing board or its authorized representative has given the~~
27 ~~employee against whom the charge is filed written notice of the~~
28 ~~unsatisfactory performance specifying the nature thereof with such~~
29 ~~specific instances of behavior and with such particularity as to~~
30 ~~furnish the employee an opportunity to correct his or her faults~~
31 ~~and overcome the grounds for the charge. The written notice shall~~
32 ~~include the evaluation made pursuant to Article 11 (commencing~~
33 ~~with Section 44660) of Chapter 3, if applicable to the employee.~~

34 ~~(2) The governing board may act during the time period~~
35 ~~composed of the last one-fourth of the schooldays it has scheduled~~
36 ~~for purposes of computing apportionments in any fiscal year if,~~
37 ~~before the beginning of that time period, the governing board or~~
38 ~~its authorized representative has given the employee against whom~~

1 the charge is filed written notice of the unsatisfactory performance
2 specifying the nature thereof with such specific instances of
3 behavior and with such particularity as to furnish the employee an
4 opportunity to correct his or her faults and overcome the grounds
5 for the charge. The written notice shall include the evaluation made
6 pursuant to Article 11 (commencing with Section 44660) of
7 Chapter 3, if applicable to the employee.

8 (b) “Unsatisfactory performance” as used in this section means,
9 and refers only to, the unsatisfactory performance particularly
10 specified as a cause for dismissal in Section 44932 and does not
11 include any other cause for dismissal specified in Section 44932.

12 ~~SEC. 3.~~

13 *SEC. 2.* Section 44939 of the Education Code is amended to
14 read:

15 44939. (a) Upon the filing of written charges, duly signed and
16 verified by the person filing them with the governing board of a
17 school district, or upon a written statement of charges formulated
18 by the governing board, charging a permanent employee of the
19 district with ~~immoral or unprofessional conduct~~ *serious or*
20 *egregious unprofessional conduct, immoral conduct*, conviction
21 of a felony or of any crime involving moral turpitude, with
22 incompetency due to mental disability, with willful refusal to
23 perform regular assignments without reasonable cause, as
24 prescribed by reasonable rules and regulations of the employing
25 school district, with violation of Section 51530, with knowing
26 membership by the employee in the Communist Party or with
27 violation of any provision in Sections 7001 to 7007, inclusive, the
28 governing board may, if it deems such action necessary,
29 immediately suspend the employee from his or her duties and give
30 notice to the employee of his or her suspension, and that 30 days
31 after service of the notice, the employee will be dismissed, unless
32 he or she demands a hearing.

33 (b) If the permanent employee is suspended upon charges of
34 knowing membership by the employee in the Communist Party or
35 for violation of Section 7001, 7002, 7003, 7006, 7007, or 51530,
36 the employee may within 10 days after service upon him or her of
37 notice of such suspension file with the governing board a verified
38 denial, in writing, of the charges. In such event the permanent
39 employee who demands a hearing within the 30-day period shall
40 continue to be paid his or her regular salary during the period of

1 suspension and until the entry of the decision of the Commission
2 on Professional Competence, if and during such time as the
3 employee furnishes to the school district a suitable bond, or other
4 security acceptable to the governing board, as a guarantee that the
5 employee will repay to the school district the amount of salary so
6 paid to him or her during the period of suspension in case the
7 decision of the Commission on Professional Competence is that
8 the employee shall be dismissed. If it is determined that the
9 employee may not be dismissed, the school board shall reimburse
10 the employee for the cost of the bond.

11 ~~SEC. 4.~~

12 *SEC. 3.* Section 44940 of the Education Code is amended to
13 read:

14 44940. (a) For purposes of this section, “charged with a
15 mandatory leave of absence offense” is defined to mean charged
16 by complaint, information, or indictment filed in a court of
17 competent jurisdiction with the commission of a sex offense as
18 defined in Section 44010, or with the commission of an offense
19 involving aiding or abetting the unlawful sale, use, or exchange
20 to minors of controlled substances listed in Schedule I, II, or III,
21 as contained in Sections 11054, 11055, and 11056 of the Health
22 and Safety Code.

23 (b) For purposes of this section, “charged with an optional leave
24 of absence offense” is defined to mean a charge by complaint,
25 information, or indictment filed in a court of competent jurisdiction
26 with the commission of a controlled substance offense as defined
27 in Section 44011 or 87011, or a violation or attempted violation
28 of Section 187 of the Penal Code, Sections 11357 to 11361,
29 inclusive, or Section 11363, 11364, or 11370.1 of the Health and
30 Safety Code, insofar as these sections relate to controlled
31 substances.

32 (c) For purposes of this section and Section 44940.5, the term
33 “school district” includes county offices of education.

34 (d) (1) If a certificated employee of a school district is charged
35 with a mandatory leave of absence offense, as defined in
36 subdivision (a), upon being informed that a charge has been filed,
37 the governing board of the school district shall immediately place
38 the employee on compulsory leave of absence. The duration of
39 the leave of absence shall be until a time not more than 10 days
40 after the date of entry of the judgment in the proceedings. No later

1 than 10 days after receipt of the complaint, information, or
2 indictment described by subdivision (a), the school district shall
3 forward a copy to the Commission on Teacher Credentialing.

4 (2) Upon receiving a copy of a complaint, information, or
5 indictment described in subdivision (a) and forwarded by the school
6 district, the Commission on Teacher Credentialing shall
7 automatically suspend the employee's teaching or service
8 credential. The duration of the suspension shall be until a time not
9 more than 10 days after the date of entry of the judgment in the
10 proceedings.

11 (e) (1) If a certificated employee of a school district is charged
12 with an optional leave of absence offense, as defined in subdivision
13 (b), the governing board of the school district may immediately
14 place the employee on compulsory leave in accordance with the
15 procedure in this section and Section 44940.5. If a certificated
16 employee is charged with an offense deemed to fall into both the
17 mandatory and the optional leave of absence categories, as defined
18 in subdivisions (a) and (b), that offense shall be treated as a
19 mandatory leave of absence offense for purposes of this section.
20 No later than 10 days after receipt of the complaint, information,
21 or indictment described by subdivision (a), the school district shall
22 forward a copy to the Commission on Teacher Credentialing.

23 (2) Upon receiving a copy of a complaint, information, or
24 indictment described in subdivision (a) and forwarded by the school
25 district, the Commission on Teacher Credentialing shall
26 automatically suspend the employee's teaching or service
27 credential. The duration of the suspension shall be until a time not
28 more than 10 days after the date of entry of the judgment in the
29 proceedings.

30 ~~SEC. 5.~~

31 *SEC. 4.* Section 44944 of the Education Code is amended to
32 read:

33 44944. (a) (1) In a dismissal or suspension proceeding initiated
34 pursuant to Section 44934, if a hearing is requested by the
35 employee, the hearing shall be commenced within 60 days from
36 the date of the employee's demand for a hearing. The hearing shall
37 be initiated, conducted, and a decision made in accordance with
38 Chapter 5 (commencing with Section 11500) of Part 1 of Division
39 3 of Title 2 of the Government Code. However, the hearing date
40 shall be established after consultation with the employee and the

1 governing board, or their representatives, and the Commission on
2 Professional Competence shall have all of the power granted to
3 an agency in that chapter, except that the right of discovery of the
4 parties shall not be limited to those matters set forth in Section
5 11507.6 of the Government Code but shall include the rights and
6 duties of any party in a civil action brought in a superior court
7 under Title 4 (commencing with Section 2016.010) of Part 4 of
8 the Code of Civil Procedure. Notwithstanding any provision to the
9 contrary, and except for the taking of oral depositions, no discovery
10 shall occur later than 30 calendar days after the employee is served
11 with a copy of the accusation pursuant to Section 11505 of the
12 Government Code. In all cases, discovery shall be completed prior
13 to seven calendar days before the date upon which the hearing
14 commences. If any continuance is granted pursuant to Section
15 11524 of the Government Code, the time limitation for
16 commencement of the hearing as provided in this subdivision shall
17 be extended for a period of time equal to the continuance. However,
18 the extension shall not include that period of time attributable to
19 an unlawful refusal by either party to allow the discovery provided
20 for in this section.

21 (2) If the right of discovery granted under paragraph (1) is
22 denied by either the employee or the governing board, all of the
23 remedies in Chapter 7 (commencing with Section 2023.010) of
24 Title 4 of Part 4 of the Code of Civil Procedure shall be available
25 to the party seeking discovery and the court of proper jurisdiction,
26 to entertain his or her motion, shall be the superior court of the
27 county in which the hearing will be held.

28 (3) The time periods in this section and of Chapter 5
29 (commencing with Section 11500) of Part 1 of Division 3 of Title
30 2 of the Government Code and of Title 4 (commencing with
31 Section 2016.010) of Part 4 of the Code of Civil Procedure shall
32 not be applied so as to deny discovery in a hearing conducted
33 pursuant to this section.

34 (4) The superior court of the county in which the hearing will
35 be held may, upon motion of the party seeking discovery, suspend
36 the hearing so as to comply with the requirement of ~~the preceding~~
37 paragraph (3).

38 (5) (A) A witness shall not be permitted to testify at the hearing
39 except upon oath or affirmation.

1 (B) Except for hearings that involve any offense as defined in
2 Sections 44010 and 44011 of this code, and Sections 11165.2 to
3 11165.6, inclusive, of the Penal Code:

4 (i) Testimony shall not be given or evidence introduced relating
5 to matters that occurred more than four years before the date of
6 the filing of the notice.

7 (ii) Evidence of records regularly kept by the governing board
8 concerning the employee may be introduced, but no decision
9 relating to the dismissal or suspension of an employee shall be
10 made based on charges or evidence of any nature relating to matters
11 occurring more than four years before the filing of the notice.

12 (b) The hearing provided for in this section shall be conducted
13 ~~by a Commission on Professional Competence~~ as follows:

14 ~~(1) The Commission on Professional Competence shall consist~~
15 ~~of an administrative law judge of the Office of Administrative~~
16 ~~Hearings for a~~ A hearing that involves any offense as defined in
17 Sections 44010 and 44011 of this code, and Sections 11165.2 to
18 11165.6, inclusive, of the Penal Code *shall be conducted solely*
19 *by an administrative law judge of the Office of Administrative*
20 *Hearings.*

21 ~~(2) The Commission on Professional Competence shall be~~
22 ~~comprised as follows for hearings~~ *Hearings* not specified in
23 paragraph (1) *shall be conducted by the Commission on*
24 *Professional Competence, which shall be comprised as follows:*

25 (A) One member of the commission shall be selected by the
26 employee, one member shall be selected by the governing board,
27 and one member shall be an administrative law judge of the Office
28 of Administrative Hearings who shall be chairperson and a voting
29 member of the commission and shall be responsible for assuring
30 that the legal rights of the parties are protected at the hearing. If
31 either the governing board or the employee for any reason fails to
32 select a commission member at least seven calendar days before
33 the date of the hearing, the failure shall constitute a waiver of the
34 right to selection, and the county board of education or its specific
35 designee shall immediately make the selection. If the county board
36 of education is also the governing board of the school district or
37 has by statute been granted the powers of a governing board, the
38 selection shall be made by the Superintendent, who shall be
39 reimbursed by the school district for all costs incident to the
40 selection.

1 (B) The member selected by the governing board and the
2 member selected by the employee shall not be related to the
3 employee and shall not be employees of the district initiating the
4 dismissal or suspension and shall hold a currently valid credential
5 and have at least five years' experience within the past 10 years
6 in the discipline of the employee.

7 (c) (1) The decision of the Commission on Professional
8 Competence *with regard to a hearing conducted pursuant to*
9 *paragraph (2) of subdivision (b)* shall be made by a majority vote,
10 and the commission shall prepare a written decision containing
11 findings of fact, determinations of issues, and a disposition that
12 shall be, solely, one of the following:

13 (A) That the employee should be dismissed.

14 (B) That the employee should be suspended for a specific period
15 of time without pay.

16 (C) That the employee should not be dismissed or suspended.

17 (2) The decision of the ~~Commission on Professional Competence~~
18 *commission with regard to a hearing conducted pursuant to*
19 *paragraph (2) of subdivision (b)* that the employee should not be
20 dismissed or suspended shall not be based on nonsubstantive
21 procedural errors committed by the school district or governing
22 board unless the errors are prejudicial errors.

23 (3) The commission shall not have the power to dispose of the
24 charge of dismissal by imposing probation or other alternative
25 sanctions. The imposition of suspension pursuant to subparagraph
26 (B) of paragraph (1) shall be available only in a suspension
27 proceeding authorized pursuant to subdivision (b) of Section 44932
28 or Section 44933.

29 (4) (A) The decision of the ~~Commission on Professional~~
30 ~~Competence~~ *commission with regard to a hearing conducted*
31 *pursuant to paragraph (2) of subdivision (b)* shall be deemed to
32 be the final decision of the governing board. ~~However, the~~

33 (B) ~~The decision of the Commission on Professional Competence~~
34 ~~administrative law judge with regard to a hearing conducted~~
35 ~~pursuant to paragraph (1) of subdivision (b) shall be deemed to~~
36 ~~be advisory in nature to advisory, and the final decision regarding~~
37 ~~the discipline of the employee shall be determined by action of the~~
38 ~~governing board with respect to hearings that involve any offense~~
39 ~~as defined in Sections 44010 and 44011 of this code, and Sections~~
40 ~~11165.2 to 11165.6, inclusive, of the Penal Code of the school~~

1 *district. None of the findings, recommendations, or determinations*
2 *contained in the proposed decision of the administrative law judge*
3 *shall be binding on the governing board. The governing board*
4 *shall, before making its final determination, allow the employee*
5 *to submit a written statement or response or, at the election of the*
6 *governing board, an oral statement concerning the disciplinary*
7 *action. The governing board's final determination shall be subject*
8 *to review and appeal pursuant to Section 1094.5 of the Code of*
9 *Civil Procedure.*

10 (5) The governing board may adopt from time to time rules and
11 procedures not inconsistent with this section as may be necessary
12 to effectuate this section.

13 (6) The governing board and the employee shall have the right
14 to be represented by counsel.

15 (d) (1) If the member selected by the governing board or the
16 member selected by the employee is employed by a school district
17 in this state, the member shall, during service on a Commission
18 on Professional Competence, continue to receive salary, fringe
19 benefits, accumulated sick leave, and other leaves and benefits
20 from the district in which the member is employed, but shall
21 receive no additional compensation or honorariums for service on
22 the commission.

23 (2) If service on a ~~Commission on Professional Competence~~
24 *commission* occurs during summer recess or vacation periods, the
25 member shall receive compensation proportionate to that received
26 during the current or immediately preceding contract period from
27 the member's employing district, whichever amount is greater.

28 (e) (1) If the Commission on Professional Competence
29 determines *in a hearing conducted pursuant to paragraph (2) of*
30 *subdivision (b)* that the employee should be dismissed or
31 suspended, the governing board and the employee shall share
32 equally the expenses of the hearing, including the cost of the
33 administrative law judge. The state shall pay any costs incurred
34 under paragraph (2) of subdivision (d), the reasonable expenses,
35 as determined by the administrative law judge, of the member
36 selected by the governing board and the member selected by the
37 employee, including, but not limited to, payments or obligations
38 incurred for travel, meals, and lodging, and the cost of the substitute
39 or substitutes, if any, for the member selected by the governing
40 board and the member selected by the employee. The Controller

1 shall pay all claims submitted pursuant to this paragraph from the
2 General Fund, and may prescribe reasonable rules, regulations,
3 and forms for the submission of the claims. The employee and the
4 governing board shall pay their own attorney's fees.

5 (2) If the ~~Commission on Professional Competence~~ *commission*
6 determines *in a hearing conducted pursuant to paragraph (2) of*
7 *subdivision (b)* that the employee should not be dismissed or
8 suspended, the governing board shall pay the expenses of the
9 hearing, including the cost of the administrative law judge, any
10 costs incurred under paragraph (2) of subdivision (d), the
11 reasonable expenses, as determined by the administrative law
12 judge, of the member selected by the governing board and the
13 member selected by the employee, including, but not limited to,
14 payments or obligations incurred for travel, meals, and lodging,
15 the cost of the substitute or substitutes, if any, for the member
16 selected by the governing board and the member selected by the
17 employee, and reasonable attorney's fees incurred by the employee.

18 (3) As used in this section, "reasonable expenses" shall not be
19 deemed "compensation" within the meaning of subdivision (d).

20 (4) If either the governing board or the employee petitions a
21 court of competent jurisdiction for review of the decision of the
22 commission, the payment of expenses to members of the
23 commission required by this subdivision shall not be stayed.

24 (5) (A) If the decision of the commission *in a hearing conducted*
25 *pursuant to paragraph (2) of subdivision (b)* is finally reversed or
26 vacated by a court of competent jurisdiction, either the state, having
27 paid the commission members' expenses, shall be entitled to
28 reimbursement from the governing board for those expenses, or
29 the governing board, having paid the expenses, shall be entitled
30 to reimbursement from the state.

31 (B) Additionally, either the employee, having paid a portion of
32 the expenses of the hearing, including the cost of the administrative
33 law judge, shall be entitled to reimbursement from the governing
34 board for the expenses, or the governing board, having paid its
35 portion and the employee's portion of the expenses of the hearing,
36 including the cost of the administrative law judge, shall be entitled
37 to reimbursement from the employee for that portion of the
38 expenses.

39 (f) The hearing provided for in ~~this section~~ *paragraph (2) of*
40 *subdivision (b)* shall be conducted in a place selected by agreement

1 among the members of the commission. In the absence of
2 agreement, and for hearings conducted pursuant to paragraph (1)
3 of subdivision (b), the place shall be selected by the administrative
4 law judge.

5 ~~SEC. 6.~~

6 *SEC. 5.* If the Commission on State Mandates determines that
7 this act contains costs mandated by the state, reimbursement to
8 local agencies and school districts for those costs shall be made
9 pursuant to Part 7 (commencing with Section 17500) of Division
10 4 of Title 2 of the Government Code.

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