

AMENDED IN SENATE MAY 25, 2012
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 44932, 44936, 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 *include serious or egregious unprofessional conduct, as specified, as a ground for dismissal of a permanent school employee, and would except from that the prohibition of giving notice to the employee between those dates, May 15 and September 15* proceedings where the charges involve specified offenses.

(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, *as defined*, within the conditions that a governing board may immediately suspend a permanent employee.

(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.

(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, 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, 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 administrative law judge related to these specified offenses would be advisory, 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 to only consider the record produced during the hearing conducted by the administrative law judge*, 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.

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

(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 44932 of the Education Code is amended
- 2 to read:
- 3 44932. (a) ~~No~~A permanent employee shall *not* be dismissed
- 4 except for one or more of the following causes:
- 5 (1) Immoral *conduct* or unprofessional conduct.

- 1 (2) *Serious or egregious unprofessional conduct as defined in*
- 2 *Section 44939.*
- 3 ~~(2)~~
- 4 (3) Commission, aiding, or advocating the commission of acts
- 5 of criminal syndicalism, as prohibited by Chapter 188 of the
- 6 Statutes of 1919, or in any amendment thereof.
- 7 ~~(3)~~
- 8 (4) Dishonesty.
- 9 ~~(4)~~
- 10 (5) Unsatisfactory performance.
- 11 ~~(5)~~
- 12 (6) Evident unfitness for service.
- 13 ~~(6)~~
- 14 (7) Physical or mental condition unfitting him or her to instruct
- 15 or associate with children.
- 16 ~~(7)~~
- 17 (8) Persistent violation of or refusal to obey the school laws of
- 18 the state or reasonable regulations prescribed for the government
- 19 of the public schools by the ~~State Board of Education~~ *state board*
- 20 or by the governing board of the school district employing him or
- 21 her.
- 22 ~~(8)~~
- 23 (9) Conviction of a felony or of ~~any~~ *a* crime involving moral
- 24 turpitude.
- 25 ~~(9)~~
- 26 (10) Violation of Section 51530 or conduct specified in Section
- 27 1028 of the Government Code, added by Chapter 1418 of the
- 28 Statutes of 1947.
- 29 ~~(10)~~
- 30 (11) Knowing membership by the employee in the Communist
- 31 Party.
- 32 ~~(11)~~
- 33 (12) Alcoholism or other drug abuse ~~which~~ *that* makes the
- 34 employee unfit to instruct or associate with children.
- 35 (b) The governing board of a school district may suspend
- 36 without pay for a specific period of time on grounds of
- 37 unprofessional conduct a permanent certificated employee or, in
- 38 a school district with an average daily attendance of less than 250
- 39 pupils, a probationary employee, pursuant to the procedures
- 40 specified in Sections 44933, 44934, 44935, 44936, 44937, 44943,

1 and 44944. This authorization shall not apply to ~~any~~ a school
2 district ~~which~~ that has adopted a collective bargaining agreement
3 pursuant to subdivision (b) of Section 3543.2 of the Government
4 Code.

5 ~~SECTION 1.~~

6 ~~SEC. 2.~~ Section 44936 of the Education Code is amended to
7 read:

8 44936. (a) The notice of dismissal or suspension in a
9 proceeding initiated pursuant to Section 44934 shall not be given
10 between May 15 and September 15. The notice shall be in writing
11 and be served upon the employee personally or by United States
12 registered mail addressed to him or her at the employee's last
13 known address. A copy of the charges filed, containing the
14 information required by Section 11503 of the Government Code,
15 together with a copy of the provisions of this article, shall be
16 attached to the notice.

17 (b) The notice of dismissal or suspension in a proceeding
18 initiated pursuant to charges described in Section 44939 may be
19 given at any time during the calendar year. This subdivision is
20 intended to codify the holding of Board of Education v.
21 Commission on Professional Competence (1976) 61 Cal.App.3d
22 664.

23 ~~SEC. 2.~~

24 ~~SEC. 3.~~ Section 44939 of the Education Code is amended to
25 read:

26 44939. (a) Upon the filing of written charges, duly signed and
27 verified by the person filing them with the governing board of a
28 school district, or upon a written statement of charges formulated
29 by the governing board, charging a permanent employee of the
30 district with serious or egregious unprofessional conduct, immoral
31 conduct, conviction of a felony or of any crime involving moral
32 turpitude, with incompetency due to mental disability, with willful
33 refusal to perform regular assignments without reasonable cause,
34 as prescribed by reasonable rules and regulations of the employing
35 school district, with violation of Section 51530, with knowing
36 membership by the employee in the Communist Party or with
37 violation of any provision in Sections 7001 to 7007, inclusive, the
38 governing board may, if it deems such action necessary,
39 immediately suspend the employee from his or her duties and give
40 notice to the employee of his or her suspension, and that 30 days

1 after service of the notice, the employee will be dismissed, unless
2 he or she demands a hearing.

3 (b) If the permanent employee is suspended upon charges of
4 knowing membership by the employee in the Communist Party or
5 for violation of Section 7001, 7002, 7003, 7006, 7007, or 51530,
6 the employee may within 10 days after service upon him or her of
7 notice of such suspension file with the governing board a verified
8 denial, in writing, of the charges. In such event the permanent
9 employee who demands a hearing within the 30-day period shall
10 continue to be paid his or her regular salary during the period of
11 suspension and until the entry of the decision of the Commission
12 on Professional Competence, if and during such time as the
13 employee furnishes to the school district a suitable bond, or other
14 security acceptable to the governing board, as a guarantee that the
15 employee will repay to the school district the amount of salary so
16 paid to him or her during the period of suspension in case the
17 decision of the Commission on Professional Competence is that
18 the employee shall be dismissed. If it is determined that the
19 employee may not be dismissed, the school board shall reimburse
20 the employee for the cost of the bond.

21 (c) *“Serious or egregious unprofessional conduct” as used in*
22 *this article means misconduct reasonably related to any offense*
23 *as described in Sections 44010 and 44011 of this code, and*
24 *Sections 11165.2 to 11165.6, inclusive, of the Penal Code.*

25 ~~SEC. 3.~~

26 *SEC. 4.* Section 44940 of the Education Code is amended to
27 read:

28 44940. (a) For purposes of this section, “charged with a
29 mandatory leave of absence offense” is defined to mean charged
30 by complaint, information, or indictment filed in a court of
31 competent jurisdiction with the commission of a sex offense as
32 defined in Section 44010, or with the commission of an offense
33 involving aiding or abetting the unlawful sale, use, or exchange
34 to minors of controlled substances listed in Schedule I, II, or III,
35 as contained in Sections 11054, 11055, and 11056 of the Health
36 and Safety Code.

37 (b) For purposes of this section, “charged with an optional leave
38 of absence offense” is defined to mean a charge by complaint,
39 information, or indictment filed in a court of competent jurisdiction
40 with the commission of a controlled substance offense as defined

1 in Section 44011 or 87011, or a violation or attempted violation
2 of Section 187 of the Penal Code, Sections 11357 to 11361,
3 inclusive, or Section 11363, 11364, or 11370.1 of the Health and
4 Safety Code, insofar as these sections relate to controlled
5 substances.

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

8 (d) (1) If a certificated employee of a school district is charged
9 with a mandatory leave of absence offense, as defined in
10 subdivision (a), upon being informed that a charge has been filed,
11 the governing board of the school district shall immediately place
12 the employee on compulsory leave of absence. The duration of
13 the leave of absence shall be until a time not more than 10 days
14 after the date of entry of the judgment in the proceedings. No later
15 than 10 days after receipt of the complaint, information, or
16 indictment described by subdivision (a), the school district shall
17 forward a copy to the Commission on Teacher Credentialing.

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

25 (e) (1) If a certificated employee of a school district is charged
26 with an optional leave of absence offense, as defined in subdivision
27 (b), the governing board of the school district may immediately
28 place the employee on compulsory leave in accordance with the
29 procedure in this section and Section 44940.5. If a certificated
30 employee is charged with an offense deemed to fall into both the
31 mandatory and the optional leave of absence categories, as defined
32 in subdivisions (a) and (b), that offense shall be treated as a
33 mandatory leave of absence offense for purposes of this section.
34 No later than 10 days after receipt of the complaint, information,
35 or indictment described by subdivision (a), the school district shall
36 forward a copy to the Commission on Teacher Credentialing.

37 (2) Upon receiving a copy of a complaint, information, or
38 indictment described in subdivision (a) and forwarded by the school
39 district, the Commission on Teacher Credentialing shall
40 automatically suspend the employee’s teaching or service

1 credential. The duration of the suspension shall be until a time not
2 more than 10 days after the date of entry of the judgment in the
3 proceedings.

4 ~~SEC. 4.~~

5 *SEC. 5.* Section 44944 of the Education Code is amended to
6 read:

7 44944. (a) (1) In a dismissal or suspension proceeding initiated
8 pursuant to Section 44934, if a hearing is requested by the
9 employee, the hearing shall be commenced within 60 days from
10 the date of the employee's demand for a hearing. The hearing shall
11 be initiated, conducted, and a decision made in accordance with
12 Chapter 5 (commencing with Section 11500) of Part 1 of Division
13 3 of Title 2 of the Government Code. However, the hearing date
14 shall be established after consultation with the employee and the
15 governing board, or their representatives, and the Commission on
16 Professional Competence shall have all of the power granted to
17 an agency in that chapter, except that the right of discovery of the
18 parties shall not be limited to those matters set forth in Section
19 11507.6 of the Government Code but shall include the rights and
20 duties of any party in a civil action brought in a superior court
21 under Title 4 (commencing with Section 2016.010) of Part 4 of
22 the Code of Civil Procedure. Notwithstanding any provision to the
23 contrary, and except for the taking of oral depositions, no discovery
24 shall occur later than 30 calendar days after the employee is served
25 with a copy of the accusation pursuant to Section 11505 of the
26 Government Code. In all cases, discovery shall be completed prior
27 to seven calendar days before the date upon which the hearing
28 commences. If any continuance is granted pursuant to Section
29 11524 of the Government Code, the time limitation for
30 commencement of the hearing as provided in this subdivision shall
31 be extended for a period of time equal to the continuance. However,
32 the extension shall not include that period of time attributable to
33 an unlawful refusal by either party to allow the discovery provided
34 for in this section.

35 (2) If the right of discovery granted under paragraph (1) is
36 denied by either the employee or the governing board, all of the
37 remedies in Chapter 7 (commencing with Section 2023.010) of
38 Title 4 of Part 4 of the Code of Civil Procedure shall be available
39 to the party seeking discovery and the court of proper jurisdiction,

1 to entertain his or her motion, shall be the superior court of the
2 county in which the hearing will be held.

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

9 (4) The superior court of the county in which the hearing will
10 be held may, upon motion of the party seeking discovery, suspend
11 the hearing so as to comply with the requirement of paragraph (3).

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

14 (B) Except for hearings that involve any offense as defined in
15 Sections 44010 and 44011 of this code, and Sections 11165.2 to
16 11165.6, inclusive, of the Penal Code:

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

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

25 (b) The hearing provided for in this section shall be conducted
26 as follows:

27 (1) A hearing that involves any offense as defined in Sections
28 44010 and 44011 of this code, and Sections 11165.2 to 11165.6,
29 inclusive, of the Penal Code shall be conducted solely by an
30 administrative law judge of the Office of Administrative Hearings.

31 (2) Hearings not specified in paragraph (1) shall be conducted
32 by the Commission on Professional Competence, which shall be
33 comprised as follows:

34 (A) One member of the commission shall be selected by the
35 employee, one member shall be selected by the governing board,
36 and one member shall be an administrative law judge of the Office
37 of Administrative Hearings who shall be chairperson and a voting
38 member of the commission and shall be responsible for assuring
39 that the legal rights of the parties are protected at the hearing. If
40 either the governing board or the employee for any reason fails to

1 select a commission member at least seven calendar days before
2 the date of the hearing, the failure shall constitute a waiver of the
3 right to selection, and the county board of education or its specific
4 designee shall immediately make the selection. If the county board
5 of education is also the governing board of the school district or
6 has by statute been granted the powers of a governing board, the
7 selection shall be made by the Superintendent, who shall be
8 reimbursed by the school district for all costs incident to the
9 selection.

10 (B) The member selected by the governing board and the
11 member selected by the employee shall not be related to the
12 employee and shall not be employees of the district initiating the
13 dismissal or suspension and shall hold a currently valid credential
14 and have at least five years' experience within the past 10 years
15 in the discipline of the employee.

16 (c) (1) The decision of the Commission on Professional
17 Competence with regard to a hearing conducted pursuant to
18 paragraph (2) of subdivision (b) shall be made by a majority vote,
19 and the commission shall prepare a written decision containing
20 findings of fact, determinations of issues, and a disposition that
21 shall be, solely, one of the following:

22 (A) That the employee should be dismissed.

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

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

26 (2) The decision of the commission with regard to a hearing
27 conducted pursuant to paragraph (2) of subdivision (b) that the
28 employee should not be dismissed or suspended shall not be based
29 on nonsubstantive procedural errors committed by the school
30 district or governing board unless the errors are prejudicial errors.

31 (3) The commission shall not have the power to dispose of the
32 charge of dismissal by imposing probation or other alternative
33 sanctions. The imposition of suspension pursuant to subparagraph
34 (B) of paragraph (1) shall be available only in a suspension
35 proceeding authorized pursuant to subdivision (b) of Section 44932
36 or Section 44933.

37 (4) (A) The decision of the commission with regard to a hearing
38 conducted pursuant to paragraph (2) of subdivision (b) shall be
39 deemed to be the final decision of the governing board.

1 (B) The decision of the administrative law judge with regard to
2 a hearing conducted pursuant to paragraph (1) of subdivision (b)
3 shall be advisory, and the final decision regarding the discipline
4 of the employee shall be determined by action of the governing
5 board of the school district. ~~None of the findings,~~
6 ~~recommendations, or determinations contained in the proposed~~
7 ~~decision of the administrative law judge shall be binding on the~~
8 ~~governing board.~~ The governing board shall, before making its
9 final determination, allow the employee to submit a written
10 statement or response or, at the election of the governing board,
11 an oral statement concerning the disciplinary action *and shall only*
12 *consider the record produced during the hearing conducted by*
13 *the administrative law judge.* The governing board's final
14 determination shall be subject to review and appeal pursuant to
15 Section 1094.5 of the Code of Civil Procedure.

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

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

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

29 (2) If service on a commission occurs during summer recess or
30 vacation periods, the member shall receive compensation
31 proportionate to that received during the current or immediately
32 preceding contract period from the member's employing district,
33 whichever amount is greater.

34 (e) (1) If the Commission on Professional Competence
35 determines in a hearing conducted pursuant to paragraph (2) of
36 subdivision (b) that the employee should be dismissed or
37 suspended, the governing board and the employee shall share
38 equally the expenses of the hearing, including the cost of the
39 administrative law judge. The state shall pay any costs incurred
40 under paragraph (2) of subdivision (d), the reasonable expenses,

1 as determined by the administrative law judge, of the member
2 selected by the governing board and the member selected by the
3 employee, including, but not limited to, payments or obligations
4 incurred for travel, meals, and lodging, and the cost of the substitute
5 or substitutes, if any, for the member selected by the governing
6 board and the member selected by the employee. The Controller
7 shall pay all claims submitted pursuant to this paragraph from the
8 General Fund, and may prescribe reasonable rules, regulations,
9 and forms for the submission of the claims. The employee and the
10 governing board shall pay their own attorney's fees.

11 (2) If the commission determines in a hearing conducted
12 pursuant to paragraph (2) of subdivision (b) that the employee
13 should not be dismissed or suspended, the governing board shall
14 pay the expenses of the hearing, including the cost of the
15 administrative law judge, any costs incurred under paragraph (2)
16 of subdivision (d), the reasonable expenses, as determined by the
17 administrative law judge, of the member selected by the governing
18 board and the member selected by the employee, including, but
19 not limited to, payments or obligations incurred for travel, meals,
20 and lodging, the cost of the substitute or substitutes, if any, for the
21 member selected by the governing board and the member selected
22 by the employee, and reasonable attorney's fees incurred by the
23 employee.

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

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

30 (5) (A) If the decision of the commission in a hearing conducted
31 pursuant to paragraph (2) of subdivision (b) is finally reversed or
32 vacated by a court of competent jurisdiction, either the state, having
33 paid the commission members' expenses, shall be entitled to
34 reimbursement from the governing board for those expenses, or
35 the governing board, having paid the expenses, shall be entitled
36 to reimbursement from the state.

37 (B) Additionally, either the employee, having paid a portion of
38 the expenses of the hearing, including the cost of the administrative
39 law judge, shall be entitled to reimbursement from the governing
40 board for the expenses, or the governing board, having paid its

1 portion and the employee's portion of the expenses of the hearing,
2 including the cost of the administrative law judge, shall be entitled
3 to reimbursement from the employee for that portion of the
4 expenses.

5 (f) The hearing provided for in paragraph (2) of subdivision (b)
6 shall be conducted in a place selected by agreement among the
7 members of the commission. In the absence of agreement, and for
8 hearings conducted pursuant to paragraph (1) of subdivision (b),
9 the place shall be selected by the administrative law judge.

10 ~~SEC. 5.~~

11 *SEC. 6.* If the Commission on State Mandates determines that
12 this act contains costs mandated by the state, reimbursement to
13 local agencies and school districts for those costs shall be made
14 pursuant to Part 7 (commencing with Section 17500) of Division
15 4 of Title 2 of the Government Code.