

AMENDED IN SENATE MAY 12, 2014

AMENDED IN SENATE APRIL 3, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 215

Introduced by Assembly Member Buchanan
(Principal coauthor: Assembly Member Olsen)
(Principal coauthors: Senators Liu, Correa, and Padilla)
(Coauthors: Senators Block and Monning)

January 31, 2013

An act to amend Sections 44932, 44934, 44935, 44936, 44937, 44939, 44940, 44941, 44943, 44944, and 44945 of, to add Sections 44934.1, 44939.1, 44939.5, 44941.1, 44944.05, and 44944.3 to, and to repeal and add Section 44944.1 of, the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 215, as amended, Buchanan. School employees: dismissal or suspension: hearings.

Existing law prohibits a permanent school employee from being dismissed, except for one or more of certain enumerated causes, including immoral or unprofessional conduct.

This bill would also include egregious misconduct, as defined, as a basis for dismissal.

Existing law requires the governing board of a school district to give notice to a permanent employee of its intention to dismiss or suspend the employee, together with a written statement of charges, at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing.

This bill would additionally apply the above to egregious misconduct. The bill would authorize a governing board of a school district, if the board has given the above notice, based on written charges, to amend the charges less than 90 days before the hearing on the charges only upon a showing of good cause. The bill would ~~authorize~~ *require that* the employee ~~to~~ be given a meaningful opportunity to respond to the amended charges. The bill would authorize proceedings, based solely on charges of egregious misconduct, to be initiated via an alternative process, which this bill would establish, as provided.

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 authorize any notice of dismissal or suspension to be given at any time of year, as provided. The bill would require a notice of dismissal or suspension given outside of the instructional year of the schoolsite where the employee is physically employed to be in writing and served personally upon the employee. The bill would also revise various procedures for providing *a* notice of dismissal or ~~suspension~~ *suspension*, and would impose various requirements for the filing of a demand for a hearing and the conduct of hearings by the Office of Administrative Hearings.

Existing law authorizes the governing board of a school district to immediately suspend an employee and give him or her notice of dismissal upon filing of written charges relating to immoral conduct, conviction of a felony, or ~~an~~ *any* crime involving moral turpitude, with incompetency due to mental disability, with willful refusal to perform regular assignments without reasonable cause, as provided.

This bill would authorize an employee who has been placed on suspension pursuant to the above provisions to serve and file with the Office of Administrative Hearings a motion for immediate reversal of suspension, as provided.

Existing law provides that upon being charged, as specified, with certain sex or controlled substance offenses, a certificated employee be placed on either a compulsory leave of absence or an optional leave of absence for certain enumerated violations.

This bill would revise the definitions of “charged with a mandatory leave of absence offense” and “charged with an optional leave of absence offense” for purposes of those provisions governing when a certificated employee is required to be placed on either a compulsory leave of absence or an optional leave of absence. Because these revisions

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.

Existing law requires in a dismissal or suspension proceeding against a permanent employee, if a hearing is requested by the employee, that the hearing be commenced within 60 days from the date of the employee's demand for a hearing.

This bill would require that the hearing be commenced within 6 months from the date of the employee's demand for a hearing, and be completed by a closing of the record within 7 months of the date of the employee's demand for a hearing. The bill would revise various procedures for the conduct of those hearings, as prescribed, including the authority to waive the conductibility of the hearing by a Commission on Professional Competence and instead have the hearing conducted by a single administrative law judge. The bill would ~~require that~~, *require*, in a dismissal or suspension proceeding carried out under the above provisions, *that* the parties make specified disclosures in lieu of certain written discovery, as prescribed, and would authorize the parties to obtain discovery by oral deposition. The bill would require the governing board of the school district and the state to share equally the expenses of the hearing if the Commission on Professional Competence determines that the employee should be dismissed or suspended.

The bill would also make conforming changes to these provisions.

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. The Legislature finds and declares both of the
- 2 following:
- 3 (a) Pupils, educators, school administrators, school boards, and
- 4 school district employees need a certificated employee dismissal
- 5 process that is both fair and efficient.

(b) This act is intended to revise existing statutes in a manner that will update and streamline the procedures for certificated employee discipline and dismissal, making it more cost effective and reducing the time necessary to complete the dismissal process.

SEC. 2. Section 44932 of the Education Code is amended to read:

44932. (a) A permanent employee shall not be dismissed except for one or more of the following causes:

(1) Immoral conduct including, but not limited to, egregious misconduct. For the purposes of this chapter, “egregious misconduct” is defined exclusively as immoral conduct that is the basis for an offense described in Section 44010 or 44011 of this code, or in Sections 11165.2 to 11165.6, inclusive, of the Penal Code.

(2) Unprofessional conduct.

(3) Commission, aiding, or advocating the commission of acts of criminal syndicalism, as prohibited by Chapter 188 of the Statutes of 1919, or in any amendment to that chapter.

(4) Dishonesty.

(5) Unsatisfactory performance.

(6) Evident unfitness for service.

(7) Physical or mental condition unfitting him or her to instruct or associate with children.

(8) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the state board or by the governing board of the school district employing him or her.

(9) Conviction of a felony or of any crime involving moral turpitude.

(10) Violation of Section 51530 or conduct specified in Section 1028 of the Government Code, added by Chapter 1418 of the Statutes of 1947.

(11) Alcoholism or other drug abuse that makes the employee unfit to instruct or associate with children.

(b) The governing board of a school district may suspend without pay for a specific period of time on grounds of unprofessional conduct a permanent certificated employee or, in a school district with an average daily attendance of less than 250 pupils, a probationary employee, pursuant to the procedures specified in Sections 44933, 44934, 44934.1, 44935, 44936, 44937,

1 44943, and 44944. This authorization shall not apply to a school
2 district that has adopted a collective bargaining agreement pursuant
3 to subdivision (b) of Section 3543.2 of the Government Code.

4 SEC. 3. Section 44934 of the Education Code is amended to
5 read:

6 44934. (a) This section shall apply to dismissal or suspension
7 proceedings based on charges as specified in Section 44932 or
8 44933, including proceedings based on charges of egregious
9 misconduct in combination with other charges. Proceedings based
10 solely on charges of egregious misconduct described in paragraph
11 (1) of subdivision (a) of Section 44932 may be initiated pursuant
12 to Section 44934.1.

13 (b) Upon the filing of written charges, duly signed and verified
14 by the person filing them, with the governing board of the school
15 district, or upon a written statement of charges formulated by the
16 governing board of the school district, charging that there exists
17 cause, as specified in Section 44932 or 44933, for the dismissal
18 or suspension of a permanent employee of the school district, the
19 governing board of the school district may, upon majority vote,
20 except as provided in this article if it deems the action necessary,
21 give notice to the permanent employee of its intention to dismiss
22 or suspend him or her at the expiration of 30 days from the date
23 of service of the notice, unless the employee demands a hearing
24 as provided in this article. Suspension proceedings may be initiated
25 pursuant to this section only if the governing board of the school
26 district has not adopted a collective bargaining agreement pursuant
27 to subdivision (b) of Section 3543.2 of the Government Code.

28 (c) Any written statement of charges shall specify instances of
29 behavior and the acts or omissions constituting the charge so that
30 the employee will be able to prepare his or her defense. It shall,
31 where applicable, state the statutes and rules that the employee is
32 alleged to have violated, and it shall also set forth the facts relevant
33 to each charge.

34 (d) If the governing board of the school district has given notice
35 to a certificated employee of its intention to dismiss or suspend
36 him or her, based upon written charges filed or formulated pursuant
37 to this section, the charges may be amended less than 90 days
38 before the hearing on the charges only upon a showing of good
39 cause. If a motion to amend charges is granted by the administrative

1 law judge, the employee shall be given a meaningful opportunity
2 to respond to the amended charges.

3 (e) A notice of the governing board of the school district to an
4 employee of its intention to dismiss or suspend him or her, together
5 with written charges filed or formulated pursuant to this section,
6 shall be sufficient to initiate a hearing under Section 11503 of the
7 Government Code, and the governing board of the school district
8 shall not be required to file or serve a separate accusation.

9 (f) This section shall also apply to the suspension of probationary
10 employees in a school district with an average daily attendance of
11 less than 250 pupils that has not adopted a collective bargaining
12 agreement pursuant to subdivision (b) of Section 3542.2 of the
13 Government Code.

14 SEC. 4. Section 44934.1 is added to the Education Code, to
15 read:

16 44934.1. (a) This section shall apply only to dismissal or
17 suspension proceedings based solely on charges of egregious
18 misconduct, as described in paragraph (1) of subdivision (a) of
19 Section 44932.

20 (b) Upon the filing of written charges, duly signed and verified
21 by the person filing them, with the governing board of ~~the~~ a school
22 district, or upon a written statement of charges formulated by the
23 governing ~~board~~, *board of a school district* charging that there
24 exists cause, as specified in paragraph (1) of subdivision (a) of
25 Section 44932, for the dismissal or suspension of a permanent
26 employee of the *school* district, the governing board *of the school*
27 *district* may, upon majority vote, except as provided in this article
28 if it deems the action necessary, give notice to the permanent
29 employee of its intention to dismiss or suspend him or her at the
30 expiration of 30 days from the date of service of the notice, unless
31 the employee demands a hearing as provided in this article.

32 (c) Any written statement of charges of egregious misconduct
33 shall specify instances of behavior and the acts or omissions
34 constituting the charge so that the employee will be able to prepare
35 his or her defense. It shall, where applicable, state the statutes and
36 rules that the employee is alleged to have violated, and it shall also
37 set forth the facts relevant to each occasion of alleged egregious
38 misconduct.

39 (d) This section shall also apply to the suspension of
40 probationary employees in a school district with an average daily

1 attendance of less than 250 pupils that has not adopted a collective
2 bargaining agreement pursuant to subdivision (b) of Section 3542.2
3 of the Government Code.

4 SEC. 5. Section 44935 of the Education Code is amended to
5 read:

6 44935. (a) ~~No~~A report on the fitness of a certificated employee
7 in a dismissal or suspension proceeding initiated pursuant to
8 Section 44934 or 44934.1 shall *not* be received from a statewide
9 professional organization by a governing board unless the
10 certificated employee shall have been given, prior to the preparation
11 of the report in its final form, the opportunity to submit in writing
12 his or her comments on the report and unless a copy of the report
13 in final form is given to the certificated employee investigated at
14 least 10 days prior to its submission to the *governing* board.

15 (b) A report shall not be distributed other than to the governing
16 board and those persons participating in its preparation, unless the
17 certificated employee does not demand a hearing as provided by
18 Section 44937.

19 SEC. 6. Section 44936 of the Education Code is amended to
20 read:

21 44936. (a) The notice of dismissal or suspension in a
22 proceeding initiated pursuant to Section 44934 or 44934.1 may be
23 given at any time of year.

24 (b) Notwithstanding subdivision (a), the notice of dismissal or
25 suspension in a proceeding involving only charges of unsatisfactory
26 performance initiated pursuant to Section 44934 shall only be
27 given during the instructional year of the schoolsite where the
28 employee is physically employed. However, a notice of dismissal
29 or suspension in a proceeding involving charges of unsatisfactory
30 performance may be initiated pursuant to paragraph (2) of
31 subdivision (b) of Section 44938.

32 (c) The notice of dismissal or suspension given during the
33 instructional year of the schoolsite where the employee is
34 physically employed shall be in writing and be served upon the
35 employee personally or by United States registered mail addressed
36 to him or her at his or her last known address. A copy of the
37 charges filed, containing the information required by Section 11503
38 of the Government Code, together with a copy of the provisions
39 of this article, shall be attached to the notice.

(d) A notice of dismissal or suspension given outside of the instructional year of the schoolsite where the employee is physically employed shall be in writing and shall be served upon the employee personally. A copy of the charges filed, containing the information required pursuant to Section 11503 of the Government Code, together with a copy of the provisions of this article, shall be attached to the notice.

SEC. 7. Section 44937 of the Education Code is amended to read:

44937. In a dismissal or suspension proceeding initiated pursuant to Section 44934 or 44934.1, if the employee does not demand a hearing by filing a written request for hearing with the governing board, he or she may be dismissed or suspended without pay for a specific period of time at the expiration of the 30-day period.

SEC. 8. Section 44939 of the Education Code is amended to read:

44939. (a) This section shall apply only to dismissal or suspension proceedings initiated pursuant to Section 44934.

(b) Upon the filing of written charges, duly signed and verified by the person filing them with the governing board of a school district, or upon a written statement of charges formulated by the governing board of a school district, charging a permanent employee of the school district with immoral conduct, conviction of a felony or of any crime involving moral turpitude, with incompetency due to mental disability, with willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district, or with violation of Section 51530, the governing board of the school district may, if it deems that action necessary, immediately suspend the employee from his or her duties and give notice to him or her of his or her suspension, and that 30 days after service of the notice of dismissal, he or she will be dismissed, unless he or she demands a hearing.

(c) (1) An employee who has been placed on suspension pursuant to this section may serve and file with the Office of Administrative Hearings a motion for immediate reversal of suspension. Review of a motion filed pursuant to this section shall be limited to a determination as to whether the facts as alleged in the statement of charges, if true, are sufficient to constitute a basis

1 for immediate suspension under this section. The motion shall
2 include a memorandum of points and authorities setting forth law
3 and argument supporting the employee's contention that the
4 statement of charges does not set forth a sufficient basis for
5 immediate suspension.

6 (2) The motion shall be served upon the governing board of the
7 school district and filed with the Office of Administrative Hearings
8 within 30 days after service upon the employee of the initial
9 pleading in the matter. The governing board of the school district
10 shall have the right to serve and file a written response to the
11 motion before or at the time of hearing.

12 (3) The hearing on the motion for immediate reversal of
13 suspension shall be held no later than 30 days after the motion is
14 filed with the Office of Administrative Hearings.

15 (4) The administrative law judge shall, no later than 15 days
16 after the hearing, issue an order denying or granting the motion.
17 The order shall be in writing, and a copy of the order shall be
18 served by the Office of Administrative Hearings upon the parties.
19 The grant or denial of the motion shall be without prejudice to
20 consideration by the Commission on Professional Competence
21 based upon the full evidentiary record before it, of the validity of
22 the grounds for dismissal. The ruling shall not be considered by
23 the commission in determining the validity of the grounds for
24 dismissal, and shall not have any bearing on the commission's
25 determination regarding the grounds for dismissal.

26 (5) An order granting a motion for immediate reversal of
27 suspension shall become effective within five days of service of
28 the order. The school district shall make the employee whole for
29 any lost wages, benefits, and compensation within 14 days after
30 service of an order granting the motion.

31 (6) A motion made pursuant to this section shall be the exclusive
32 means of obtaining interlocutory review of suspension pending
33 dismissal. The grant or denial of the motion shall not be subject
34 to interlocutory judicial review.

35 (d) A motion for immediate reversal of suspension pursuant to
36 this section shall have no bearing on the authority of a governing
37 board of a school district to determine the physical placement and
38 assignment of an employee who is suspended or placed on
39 administrative leave during the review of the motion or while
40 dismissal charges are pending.

1 SEC. 9. Section 44939.1 is added to the Education Code, to
2 read:

3 44939.1. (a) This section shall apply only to dismissal or
4 suspension proceedings initiated pursuant to Section 44934.1.

5 (b) Upon the filing of written charges, duly signed and verified
6 by the person filing them with the governing board of a school
7 district, or upon a written statement of charges formulated by the
8 governing ~~board~~, *board of a school district*, charging a permanent
9 employee of the *school* district with egregious misconduct, as
10 defined in paragraph (1) of subdivision (a) of Section 44932, the
11 governing board *of the school district* may, if it deems such action
12 necessary, immediately suspend the employee from his or her
13 duties and give notice to him or her of his or her suspension, and
14 that 30 days after service of the notice of dismissal, he or she will
15 be dismissed, unless he or she demands a hearing.

16 ~~(c) School districts, county offices of education, and charter~~
17 ~~schools are prohibited from entering into an agreement that would~~
18 ~~prevent a mandatory report of egregious misconduct, as defined~~
19 ~~in paragraph (1) of subdivision (a) of Section 44932, to the~~
20 ~~Commission on Teacher Credentialing or any other state or federal~~
21 ~~agency.~~

22 ~~(d) School districts, county offices of education, and charter~~
23 ~~schools are prohibited from entering into an agreement that would~~
24 ~~authorize expunging from a school employee's personnel file~~
25 ~~credible complaints of, substantiated investigations into, or~~
26 ~~discipline for, egregious misconduct. This prohibition does not~~
27 ~~preclude any agreement to remove documents containing~~
28 ~~allegations that have been the subject of a hearing before an~~
29 ~~arbitrator, school board, personnel commission, Commission on~~
30 ~~Professional Competence, or administrative law judge, in which~~
31 ~~the employee prevailed, the allegations were determined to be~~
32 ~~false, not credible, or unsubstantiated, or a determination was made~~
33 ~~that the discipline was not warranted.~~

34 ~~(e) A school district, county office of education, or charter~~
35 ~~school that has made a report of an employee's egregious~~
36 ~~misconduct to the Commission on Teacher Credentialing shall~~
37 ~~disclose this fact to a school district, county office of education,~~
38 ~~or charter school considering an application for employment from~~
39 ~~the employee, upon inquiry.~~

1 ~~(f) Any school employee who alleges that another school~~
2 ~~employee has engaged in egregious misconduct, as defined in~~
3 ~~paragraph (1) of subdivision (a) of Section 44932, knowing at the~~
4 ~~time of making the allegation that the allegation was false, shall~~
5 ~~be subject to certificate revocation, if applicable.~~

6 *SEC. 10. Section 44939.5 is added to the Education Code, to*
7 *read:*

8 *44939.5. (a) School districts, county offices of education, and*
9 *charter schools are prohibited from entering into an agreement*
10 *that would prevent a mandatory report of egregious misconduct,*
11 *as defined in paragraph (1) of subdivision (a) of Section 44932,*
12 *to the Commission on Teacher Credentialing or any other state*
13 *or federal agency.*

14 *(b) School districts, county offices of education, and charter*
15 *schools are prohibited from entering into an agreement that would*
16 *authorize expunging from a school employee's personnel file*
17 *credible complaints of, substantiated investigations into, or*
18 *discipline for, egregious misconduct. This prohibition does not*
19 *preclude any agreement to remove documents containing*
20 *allegations that have been the subject of a hearing before an*
21 *arbitrator, school board, personnel commission, Commission on*
22 *Professional Competence, or administrative law judge, in which*
23 *the employee prevailed, the allegations were determined to be*
24 *false, not credible, or unsubstantiated, or a determination was*
25 *made that the discipline was not warranted.*

26 *(c) A school district, county office of education, or charter*
27 *school that has made a report of an employee's egregious*
28 *misconduct to the Commission on Teacher Credentialing shall*
29 *disclose this fact to a school district, county office of education,*
30 *or charter school considering an application for employment from*
31 *the employee, upon inquiry.*

32 *(d) Any school employee who alleges that another school*
33 *employee has engaged in egregious misconduct, as defined in*
34 *paragraph (1) of subdivision (a) of Section 44932, knowing at the*
35 *time of making the allegation that the allegation was false, shall*
36 *be subject to certificate revocation, if applicable.*

37 ~~SEC. 10.~~

38 *SEC. 11. Section 44940 of the Education Code is amended to*
39 *read:*

1 44940. (a) For purposes of this section, “charged with a
2 mandatory leave of absence offense” is defined to mean charged
3 by complaint, information, or indictment filed in a court of
4 competent jurisdiction with the commission of any sex offense as
5 defined in Section 44010, with a violation or attempted violation
6 of Section 187 of the Penal Code, or with the commission of any
7 offense involving aiding or abetting the unlawful sale, use, or
8 exchange to minors of controlled substances listed in Schedule I,
9 II, or III, as contained in Sections 11054, 11055, and 11056 of the
10 Health and Safety Code.

11 (b) For purposes of this section, “charged with an optional leave
12 of absence offense” is defined to mean a charge by complaint,
13 information, or indictment filed in a court of competent jurisdiction
14 with the commission of any controlled substance offense as defined
15 in Section 44011 or 87011, Sections 11357 to 11361, inclusive,
16 or Section 11363, 11364, or 11370.1 of the Health and Safety
17 Code, insofar as these sections relate to any controlled substances
18 except marijuana, mescaline, peyote, or tetrahydrocannabinols.

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

21 (d) (1) If a certificated employee of a school district is charged
22 with a mandatory leave of absence offense, as defined in
23 subdivision (a), upon being informed that a charge has been filed,
24 the governing board of the school district shall immediately place
25 the employee on compulsory leave of absence. The duration of
26 the leave of absence shall be until a time not more than 10 days
27 after the date of entry of the judgment in the proceedings. No later
28 than 10 days after receipt of the complaint, information, or
29 indictment described by subdivision (a), the school district shall
30 forward a copy to the Commission on Teacher Credentialing.

31 (2) Upon receiving a copy of a complaint, information, or
32 indictment described in subdivision (a) and forwarded by a school
33 district, the Commission on Teacher Credentialing shall
34 automatically suspend the employee’s teaching or service
35 credential. The duration of the suspension shall be until a time not
36 more than 10 days after the date of entry of the judgment in the
37 proceedings.

38 (e) (1) If a certificated employee of a school district is charged
39 with an optional leave of absence offense as defined in subdivision
40 (b), the governing board of the school district may immediately

1 place the employee upon compulsory leave in accordance with the
2 procedure in this section and Section 44940.5. If any certificated
3 employee is charged with an offense deemed to fall into both the
4 mandatory and the optional leave of absence categories, as defined
5 in subdivisions (a) and (b), that offense shall be treated as a
6 mandatory leave of absence offense for purposes of this section.
7 No later than 10 days after receipt of the complaint, information,
8 or indictment described by subdivision (a), the school district shall
9 forward a copy to the Commission on Teacher Credentialing.

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

17 ~~SEC. 11.~~

18 *SEC. 12.* Section 44941 of the Education Code is amended to
19 read:

20 44941. (a) The notice of suspension and intention to dismiss
21 shall be in writing and served pursuant to Section 44936. A copy
22 of the charges filed, containing the information required by Section
23 11503 of the Government Code, together with a copy of the
24 provisions of this article, shall be attached to the notice. If the
25 employee does not demand a hearing within the 30-day period, he
26 or she may be dismissed upon the expiration of 30 days after
27 service of the notice.

28 (b) An employee who demands a hearing shall file a single
29 document containing his or her request for a hearing pursuant to
30 this section and a notice of defense pursuant to Sections 11505
31 and 11506 of the Government Code.

32 ~~SEC. 12.~~

33 *SEC. 13.* Section 44941.1 is added to the Education Code, to
34 read:

35 44941.1. Notwithstanding Section 44941, the notice of
36 suspension and intention to dismiss that is based exclusively on
37 charges of egregious misconduct as described in paragraph (1) of
38 subdivision (a) of Section 44932, shall be in writing and served
39 pursuant to Section 44936. A copy of the charges filed, containing
40 the information required by Section 11503 of the Government

1 Code, together with a copy of the provisions of this article, shall
2 be attached to the notice. If the employee does not demand a
3 hearing within the 30-day period, he or she may be dismissed upon
4 the expiration of 30 days after service of the notice.

5 ~~SEC. 13.~~

6 *SEC. 14.* Section 44943 of the Education Code is amended to
7 read:

8 44943. When any employee who has been served with notice
9 pursuant to Section 44934 or 44934.1 of the governing board's
10 intention to dismiss or suspend him or her demands a hearing, the
11 governing board shall have the option either (a) to rescind its
12 action, or (b) schedule a hearing on the matter.

13 ~~SEC. 14.~~

14 *SEC. 15.* Section 44944 of the Education Code is amended to
15 read:

16 44944. (a) This section shall apply only to dismissal or
17 suspension proceedings initiated pursuant to Section 44934.

18 (b) (1) (A) In a dismissal or suspension proceeding initiated
19 pursuant to Section 44934, if a hearing is requested by the
20 employee, the hearing shall be commenced within six months from
21 the date of the employee's demand for a hearing. A continuance
22 shall not extend the date for the commencement of the hearing
23 more than six months from the date of the employee's request for
24 a hearing, except for extraordinary circumstances, as determined
25 by the administrative law judge. If extraordinary circumstances
26 are found that extend the date for the commencement of the
27 hearing, the deadline for concluding the hearing and closing the
28 record pursuant to this subdivision shall be extended for a period
29 of time equal to the continuance. The hearing date shall be
30 established after consultation with the employee and the governing
31 board of the school district, or their representatives, except that if
32 the parties are not able to reach an agreement on a date, the Office
33 of Administrative Hearings shall unilaterally set a date in
34 compliance with this section. The hearing shall be completed by
35 a closing of the record within seven months of the date of the
36 employee's demand for a hearing. A continuance shall not extend
37 the date for the close of the record more than seven months from
38 the date of the employee's request for a hearing, except for good
39 cause, as determined by the administrative law judge.

1 (B) Where substantial progress has been made in completing
2 the previously scheduled days of the hearing within the
3 seven-month period but the hearing cannot be completed, for good
4 cause shown, within the seven-month period, the period for
5 completing the hearing may be extended by the presiding
6 administrative law judge. If the administrative law judge grants a
7 continuance under this subparagraph, he or she shall establish a
8 reasonable timetable for the completion of the hearing and the
9 closing of the record. The hearing shall be initiated and conducted,
10 and a decision made, in accordance with Chapter 5 (commencing
11 with Section 11500) of Part 1 of Division 3 of Title 2 of the
12 Government Code, and the Commission on Professional
13 Competence shall have all of the power granted to an agency
14 pursuant to that chapter, except as described in this article.

15 (2) (A) A witness shall not be permitted to testify at the hearing
16 except upon oath or affirmation. No testimony shall be given or
17 evidence introduced relating to matters that occurred more than
18 four years before the date of the filing of the notice, except
19 allegations of an act described in Section 44010 of this code or
20 Sections 11165.2 to 11165.6, inclusive, of the Penal Code.

21 (B) Evidence of records regularly kept by the governing board
22 of the school district concerning the employee may be introduced,
23 but no decision relating to the dismissal or suspension of an
24 employee shall be made based on charges or evidence of any nature
25 relating to matters occurring more than four years before the filing
26 of the notice, except allegations of an act described in Section
27 44010 of this code or Sections 11165.2 to 11165.6, inclusive, of
28 the Penal Code.

29 (c) (1) The hearing provided for in this section shall be
30 conducted by a Commission on Professional Competence, unless
31 the parties submit a statement in writing to the Office of
32 Administrative Hearings, indicating that both parties waive the
33 right to convene a Commission on Professional Competence and
34 stipulate to having the hearing conducted by a single administrative
35 law judge. If the parties elect to waive a hearing before the
36 Commission on Professional Competence, the hearing shall be
37 initiated and 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, and the administrative law
40 judge conducting the hearing shall have all the powers granted to

1 a Commission on Professional Competence pursuant to that
2 chapter, except as described in this article.

3 (2) If the parties elect not to waive a hearing before a
4 Commission on Professional Competence, one member of the
5 commission shall be selected by the employee, one member shall
6 be selected by the governing board of the school district, and one
7 member shall be an administrative law judge of the Office of
8 Administrative Hearings who shall be chairperson and a voting
9 member of the commission and shall be responsible for assuring
10 that the legal rights of the parties are protected at the hearing.

11 (3) The governing board of the school district and the employee
12 shall select Commission on Professional Competence members
13 no later than 45 days before the date set for hearing, and shall serve
14 notice of their selection upon all other parties and upon the Office
15 of Administrative Hearings. Failure to meet this deadline shall
16 constitute a waiver of the right to selection, and the county board
17 of education or its specific designee shall immediately make the
18 selection. If the county board of education is also the governing
19 board of the school district or has by statute been granted the
20 powers of a governing board, the selection shall be made by the
21 Superintendent, who shall be reimbursed by the school district for
22 all costs incident to the selection.

23 (4) Any party who believes that a selected Commission on
24 Professional Competence member is not qualified may file an
25 objection, including a statement describing the basis for the
26 objection, with the Office of Administrative Hearings and serve
27 the objection and statement upon all other parties within 10 days
28 of the date that the notice of selection is filed. Within seven days
29 after the filing of any objection, the administrative law judge
30 assigned to the matter shall rule on the objection or convene a
31 teleconference with the parties for argument.

32 (5) (A) The member selected by the governing board of the
33 school district and the member selected by the employee shall not
34 be related to the employee and shall not be employees of the school
35 district initiating the dismissal or suspension. Each member shall
36 hold a currently valid credential and have at least three years'
37 experience within the past 10 years in the discipline of the
38 employee.

39 (B) For purposes of this paragraph, the following terms have
40 the following meanings:

1 (i) For an employee subject to dismissal whose most recent
2 teaching assignment is in kindergarten or any of the grades 1 to 6,
3 inclusive, “discipline” means a teaching assignment in kindergarten
4 or any of the grades 1 to 6, inclusive.

5 (ii) For an employee subject to dismissal whose most recent
6 assignment requires an education specialist credential or a services
7 credential, “discipline” means an assignment that requires an
8 education specialist credential or a services credential, respectively.

9 (iii) For an employee subject to dismissal whose most recent
10 teaching assignment is in any of the grades 7 to 12, inclusive,
11 “discipline” means a teaching assignment in any of grades 7 to 12,
12 inclusive, in the same area of study, as that term is used in Section
13 51220, as the most recent teaching assignment of the employee
14 subject to dismissal.

15 (d) (1) The decision of the Commission on Professional
16 Competence shall be made by a majority vote, and the commission
17 shall prepare a written decision containing findings of fact,
18 determinations of issues, and a disposition that shall be, solely,
19 one of the following:

20 (A) That the employee should be dismissed.

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

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

24 (2) The decision of the Commission on Professional Competence
25 that the employee should not be dismissed or suspended shall not
26 be based on nonsubstantive procedural errors committed by the
27 school district or governing board of the school district unless the
28 errors are prejudicial errors.

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

35 (4) The decision of the Commission on Professional Competence
36 shall be deemed to be the final decision of the governing board of
37 the school district.

38 (5) The governing board of the school district may adopt from
39 time to time rules and procedures not inconsistent with this section
40 as may be necessary to effectuate this section.

1 (6) The governing board of the school district and the employee
2 shall have the right to be represented by counsel.

3 (e) (1) If the member selected by the governing board of the
4 school district or the member selected by the employee is employed
5 by any school district in this state, the member shall, during any
6 service on a Commission on Professional Competence, continue
7 to receive salary, fringe benefits, accumulated sick leave, and other
8 leaves and benefits from the school district in which the member
9 is employed, but shall receive no additional compensation or
10 honorariums for service on the commission.

11 (2) If the member selected is a retired employee, the member
12 shall receive pay at the daily substitute teacher rate in the school
13 district that is a party to the hearing. Service on a Commission on
14 Professional Competence shall not be credited toward retirement
15 benefits.

16 (3) If service on a Commission on Professional Competence
17 occurs during summer recess or vacation periods, the member shall
18 receive compensation proportionate to that received during the
19 current or immediately preceding contract period from the
20 member's employing school district, whichever amount is greater.

21 (f) (1) If the Commission on Professional Competence
22 determines that the employee should be dismissed or suspended,
23 the governing board of the school district and the state shall share
24 equally the expenses of the hearing, including the cost of the
25 administrative law judge. The state shall pay any costs incurred
26 under paragraphs (2) and (3) of subdivision (e), the reasonable
27 expenses, as determined by the administrative law judge, of the
28 member selected by the governing board of the school district and
29 the member selected by the employee, including, but not limited
30 to, payments or obligations incurred for travel, meals, and lodging,
31 and the cost of the substitute or substitutes, if any, for the member
32 selected by the governing board of the school district and the
33 member selected by the employee. The Controller shall pay all
34 claims submitted pursuant to this paragraph from the General Fund,
35 and may prescribe reasonable rules, regulations, and forms for the
36 submission of the claims. The employee and the governing board
37 of the school district shall pay their own attorney's fees.

38 (2) If the Commission on Professional Competence determines
39 that the employee should not be dismissed or suspended, the
40 governing board of the school district shall pay the expenses of

1 the hearing, including the cost of the administrative law judge, any
2 costs incurred under paragraphs (2) and (3) of subdivision (e), the
3 reasonable expenses, as determined by the administrative law
4 judge, of the member selected by the governing board of the school
5 district and the member selected by the employee, including, but
6 not limited to, payments or obligations incurred for travel, meals,
7 and lodging, the cost of the substitute or substitutes, if any, for the
8 member selected by the governing board of the school district and
9 the member selected by the employee, and reasonable attorney's
10 fees incurred by the employee.

11 (3) As used in this section, "reasonable expenses" shall not be
12 deemed "compensation" within the meaning of subdivision (e).

13 (4) If either the governing board of the school district or the
14 employee petitions a court of competent jurisdiction for review of
15 the decision of the Commission on Professional Competence the
16 payment of expenses to members of the commission required by
17 this subdivision shall not be stayed.

18 (5) If the decision of the Commission on Professional
19 Competence is reversed or vacated by a court of competent
20 jurisdiction, either the state, having paid the commission members'
21 expenses, shall be entitled to reimbursement from the governing
22 board of the school district for those expenses, or the governing
23 board of the school district, having paid the expenses, shall be
24 entitled to reimbursement from the state. If either the governing
25 board of the school district or the employee petitions a court of
26 competent jurisdiction for review of the decision to overturn the
27 administrative law judge's decision, the payment of the expenses
28 of the hearing, including the cost of the administrative law judge
29 required by this paragraph, shall be stayed until no further appeal
30 is sought, or all appeals are exhausted.

31 (g) The hearing provided for in this section shall be conducted
32 in a place selected by agreement among the members of the
33 Commission on Professional Competence. In the absence of
34 agreement, the place shall be selected by the administrative law
35 judge.

36 ~~SEC. 15.~~

37 *SEC. 16.* Section 44944.05 is added to the Education Code, to
38 read:

39 44944.05. (a) In a dismissal or suspension proceeding initiated
40 pursuant to Section 44934, in lieu of written discovery required

1 pursuant to Section 11507.6 of the Government Code, the parties
2 shall make disclosures as described in this section. This section
3 shall not apply to dismissal or suspension proceedings initiated
4 pursuant to Section 44934.1.

5 (b) (1) An initial disclosure shall comply with the following
6 requirements:

7 (A) A party shall, without awaiting a discovery request, provide
8 to the other parties both of the following:

9 (i) The name and, if known, the address and telephone number
10 of each individual likely to have discoverable information, along
11 with the subjects of information relating to the allegations made
12 in the charges and the parties' claims and defenses, unless the use
13 would be solely for impeachment purposes.

14 (ii) A copy of all documents, electronically stored information,
15 and tangible items that the disclosing party has in its possession,
16 custody, or control relating to the allegations made in the charges
17 and the parties' claims or defenses, unless the use would be solely
18 for impeachment.

19 (B) The school district and the employee shall make their initial
20 disclosures within 45 days of the date of the employee's demand
21 for a hearing.

22 (C) A party shall make its initial disclosures based on the
23 information then reasonably available to it. A party is not excused
24 from making its disclosures because it has not fully investigated
25 the case or because it challenges the sufficiency of another party's
26 disclosures. A party's failure to make initial disclosures within the
27 deadlines set forth in this section shall preclude the party from
28 introducing witnesses or evidence not disclosed at the hearing,
29 unless the party shows good cause for its failure to timely disclose.

30 (D) A party has an obligation to promptly supplement its initial
31 disclosures as new information or evidence becomes known or
32 available. Supplemental disclosures shall be made as soon as
33 possible, and no later than 60 days before the date of
34 commencement of the hearing. A party's failure to make
35 supplemental disclosures promptly upon discovery or availability
36 of new information or evidence shall preclude the party from
37 introducing witnesses or evidence not disclosed at the hearing,
38 unless the party shows good cause for its failure to timely disclose.

39 (2) The disclosure of expert testimony shall comply with the
40 following requirements:

1 (A) A party shall also disclose to the other parties the identities
2 of any expert witnesses whose testimony it may use at the hearing.

3 (B) The disclosure specified in subparagraph (A) shall be
4 accompanied by a summary of the witness' expected testimony,
5 including a description of the facts and data considered by the
6 witness; a description of the witness' qualifications, including a
7 list of all publications authored in the previous 10 years; a list of
8 all other cases in which, during the previous four years, the witness
9 testified as an expert at a hearing or by deposition; and a statement
10 of the compensation to be paid to the expert witness.

11 (C) Expert witness disclosures shall be made no later than 60
12 days before the date of commencement of the hearing. A party's
13 failure to make full and timely expert witness disclosures shall
14 preclude the party's use of the expert witness' testimony or
15 evidence at the hearing.

16 (3) Prehearing disclosures shall comply with the following
17 requirements:

18 (A) In addition to the disclosures required in paragraphs (1) and
19 (2), a party shall provide to the other parties the following
20 information about the evidence that it may present at the hearing:

21 (i) The name, ~~and~~ *and*, if not previously provided, the address
22 and telephone number of each witness, separately identifying those
23 the party expects to present and those it may call if the need arises.

24 (ii) An identification of each exhibit, separately identifying
25 those items the party expects to offer and those it may offer if the
26 need arises.

27 (B) Prehearing disclosures shall be made at least 30 days before
28 the hearing.

29 (i) Within 14 days after prehearing disclosures are made, a party
30 shall file and serve any objections, along with the grounds for each
31 objection, to the admissibility of evidence.

32 (ii) These objections shall be decided on the first day of hearing,
33 or at a prehearing conference conducted pursuant to Section
34 11511.5 of the Government Code. Documents and individuals not
35 timely disclosed without good cause shall be precluded from
36 admission at the hearing.

37 (c) In addition to the disclosures required by subdivision (a),
38 the parties may obtain discovery by oral deposition in California,
39 in accordance with Sections 2025.010 to 2025.620, inclusive, of
40 the Code of Civil Procedure, except as described in this article.

1 The school district may take the depositions of the employee and
2 no more than four other witnesses, and the employee may take
3 depositions of no more than five witnesses. Each witness deposition
4 is limited to seven hours. An administrative law judge may allow
5 the parties to conduct additional depositions only upon a showing
6 of good cause. If a motion to conduct additional depositions is
7 granted by the administrative law judge, the employee shall be
8 given a meaningful opportunity to respond to new evidence
9 introduced as a result of the additional depositions. An order
10 granting a motion for additional depositions shall not constitute
11 an extraordinary circumstance or good cause for purposes of
12 extending the deadlines set forth in paragraph (1) of subdivision
13 (b) of Section 44944.

14 (d) If the right to disclosures or oral depositions is denied by
15 either the employee or the governing board, the exclusive right of
16 a party seeking an order compelling production of discovery shall
17 be pursuant to Section 11507.7 of the Government Code. If a party
18 seeks protection from unreasonable or oppressive discovery
19 demands, the exclusive right of a party seeking an order for
20 protection shall be pursuant to Section 11450.30 of the Government
21 Code.

22 ~~SEC. 16.~~

23 *SEC. 17.* Section 44944.1 of the Education Code is repealed.

24 ~~SEC. 17.~~

25 *SEC. 18.* Section 44944.1 is added to the Education Code, to
26 read:

27 44944.1. (a) This section shall apply only to dismissal or
28 suspension proceedings initiated pursuant to Section 44934.1.

29 (b) Once the governing board of the school district has initiated
30 dismissal or suspension proceedings pursuant to Section 44934.1,
31 the process described in this section shall be the exclusive means
32 of pursuing a dismissal or suspension for the acts or events
33 constituting the charge of egregious misconduct, and these specific
34 acts or events shall not be used to support any additional or
35 subsequent notice of suspension or dismissal pursuant to Section
36 44934. Once the governing board of the school district has initiated
37 dismissal or suspension proceedings pursuant to Section 44934.1,
38 the process described in this section shall be the exclusive means
39 of pursuing a dismissal or suspension against the certificated
40 employee until a written decision has been reached by the

1 administrative law ~~judge~~, judge pursuant to paragraph (1) of
2 subdivision ~~(e)~~: *(e), the charges have been dismissed, or the*
3 *dismissal or suspension proceeding has been settled or otherwise*
4 *resolved.* If a suspension initiated against an employee pursuant
5 to Section 44934.1 is upheld, and a dismissal was not pursued on
6 the same charges, the entry of judgment of the suspension under
7 Section 44934.1 may be considered as evidence to support a
8 subsequent notice of dismissal based on other charges. If a
9 suspension initiated against an employee pursuant to Section
10 44934.1 is upheld, but the employee prevailed on the dismissal
11 proceeding based on the same charges, the entry of judgment of
12 the suspension under Section 44934.1 shall not be considered as
13 evidence to support a subsequent notice of dismissal based on
14 other charges.

15 (c) The hearing provided for in this section shall be initiated
16 and conducted, and a decision made, in accordance with Chapter
17 5 (commencing with Section 11500) of Part 1 of Division 3 of
18 Title 2 of the Government Code, by an administrative law judge.
19 The administrative law judge conducting the hearing shall have
20 all the powers granted to an agency pursuant to that chapter.

21 (d) (1) (A) In a dismissal or suspension proceeding initiated
22 pursuant to Section 44934.1, if a hearing is requested by the
23 employee, the hearing shall be commenced within 60 days from
24 the date of the employee's demand for a hearing. The hearing date
25 shall be established after consultation with the employee and the
26 governing board, or their representatives, except that, if the parties
27 are not able to reach agreement on a date, the Office of
28 Administrative Hearings shall unilaterally set a date in compliance
29 with this section. The Office of Administrative Hearings shall
30 prioritize the scheduling of dismissal or suspension proceedings
31 initiated pursuant to Section 44934.1 over other proceedings related
32 to certificated school employees.

33 (B) The right of discovery of the parties shall not be limited to
34 those matters set forth in Section 11507.6 of the Government Code
35 but shall include the rights and duties of any party in a civil action
36 brought in a superior court under Title 4 (commencing with Section
37 2016.010) of Part 4 of the Code of Civil Procedure.
38 Notwithstanding any provision to the contrary, and except for the
39 taking of oral depositions, no discovery shall occur later than 30
40 calendar days after the employee is served with a copy of the

1 accusation pursuant to Section 11505 of the Government Code.
2 In all cases, discovery shall be completed prior to seven calendar
3 days before the date upon which the hearing commences. If any
4 continuance is granted pursuant to Section 11524 of the
5 Government Code, the time limitation for commencement of the
6 hearing as provided in this subdivision shall be extended for a
7 period of time equal to the continuance. The continuance or
8 continuances granted pursuant to Section 11524 of the Government
9 Code, if any, shall not extend by more than a total of 30 days the
10 deadline set forth in paragraph (1) of subdivision (d). The extension
11 shall not include that period of time attributable to an unlawful
12 refusal by either party to allow the discovery provided for in this
13 section.

14 (2) If the right of discovery granted under paragraph (1) is
15 denied by either the employee or the governing board, the exclusive
16 right of a party seeking an order compelling production of
17 discovery shall be pursuant to Section 11507.7 of the Government
18 Code. If a party seeks protection from unreasonable or oppressive
19 discovery demands, the exclusive right of a party seeking an order
20 for protection shall be pursuant to Section 11450.30 of the
21 Government Code.

22 (3) A witness shall not be permitted to testify at the hearing
23 except upon oath or affirmation. No testimony shall be given or
24 evidence introduced relating to matters that occurred more than
25 four years before the date of the filing of the notice, except
26 evidence of egregious misconduct, as described in paragraph (1)
27 of subdivision (a) of Section 44932, which shall not be excluded
28 based on the passage of time.

29 (4) Evidence of records regularly kept by the governing board
30 of the school district concerning the employee may be introduced,
31 but no decision relating to the dismissal or suspension of an
32 employee shall be made based on charges or evidence of any nature
33 relating to matters occurring more than four years before the filing
34 of the notice, except evidence of egregious misconduct, as
35 described in paragraph (1) of subdivision (a) of Section 44932,
36 which shall not be excluded based on the passage of time.

37 (e) (1) The administrative law judge shall prepare a written
38 decision containing findings of fact, determinations of issues, and
39 a disposition that shall be, solely, one of the following:

40 (A) That the employee should be dismissed.

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

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

4 (2) The decision of the administrative law judge that the
5 employee should not be dismissed or suspended shall not be based
6 on nonsubstantive procedural errors committed by the school
7 district or *the governing board of the school district* unless the
8 errors are prejudicial errors.

9 (3) The administrative law judge shall not have the power to
10 dispose of the charge of dismissal by imposing probation or other
11 alternative sanctions. The imposition of suspension pursuant to
12 subparagraph (B) of paragraph (1) shall be available only in a
13 suspension proceeding authorized pursuant to subdivision (b) of
14 Section 44932 or Section 44933.

15 (4) The decision of the administrative law judge shall be deemed
16 to be the final decision of the governing ~~board~~ *board of the school*
17 *district*.

18 (5) The *state* board may adopt from time to time rules and
19 procedures not inconsistent with this section as may be necessary
20 to effectuate this section.

21 (6) The governing board *of the school district* and the employee
22 shall have the right to be represented by counsel.

23 (f) (1) If the administrative law judge determines that the
24 employee should be dismissed or suspended, the governing board
25 *of the school district* and the state shall share equally the expenses
26 of the hearing, including the cost of the administrative law judge.
27 The Controller shall pay all claims submitted pursuant to this
28 paragraph from the General Fund, and may prescribe reasonable
29 rules, regulations, and forms for the submission of the claims. The
30 employee and the governing board *of the school district* shall pay
31 their own attorney's fees.

32 (2) If the administrative law judge determines that the employee
33 should not be dismissed or suspended, the governing board *of the*
34 *school district* shall pay the expenses of the hearing, including the
35 cost of the administrative law judge, and reasonable attorney's
36 fees incurred by the employee.

37 (3) If either the governing board of the school district or the
38 employee petitions a court of competent jurisdiction for review of
39 the decision of the administrative law judge, the payment of the

1 expenses of the hearing, including the cost of the administrative
2 law judge required by this subdivision, shall not be stayed.

3 (4) If either the governing board of the school district or the
4 employee petitions a court of competent jurisdiction for review of
5 the decision of the administrative law judge and the decision is
6 upheld, the appellee shall be entitled to an award of reasonable
7 attorney's fees and costs expended on the appeal.

8 (5) If the decision of the administrative law judge is reversed
9 or vacated by a court of competent jurisdiction, either the state,
10 having paid one-half of the expenses of the hearing, including the
11 cost of the administrative law judge, shall be entitled to
12 reimbursement from the governing board *of the school district* for
13 those expenses, or the governing board of the school district, having
14 paid one-half of the expenses, shall be entitled to reimbursement
15 from the state. If either the governing board of the school district
16 or the employee petitions a court of competent jurisdiction for
17 review of the decision to overturn the administrative law judge's
18 decision, the payment of the expenses of the hearing, including
19 the cost of the administrative law judge required by this ~~paragraph~~
20 *paragraph*, shall be stayed until no further appeal is sought, or all
21 appeals are exhausted.

22 (g) The hearing provided for in this section shall be conducted
23 in a place selected in accordance with Section 11508 of the
24 Government Code.

25 ~~SEC. 18.~~

26 *SEC. 19.* Section 44944.3 is added to the Education Code, to
27 read:

28 44944.3. At a hearing conducted pursuant to Section 44944 or
29 44944.1, the administrative law judge, before admitting any
30 testimony or evidence concerning an individual pupil, shall
31 determine whether the introduction of the testimony or evidence
32 at an open hearing would violate any provision of Article 5
33 (commencing with Section 49073) of Chapter 6.5 of Part 27 of
34 Division 4, relating to privacy of pupil records. If the administrative
35 law judge, in his or her discretion, determines that any of those
36 provisions would be violated, he or she shall order that the hearing,
37 or any portion thereof at which the testimony or evidence would
38 be produced, be conducted in executive session.

1 ~~SEC. 19.~~

2 *SEC. 20.* Section 44945 of the Education Code is amended to
3 read:

4 44945. The decision reached in a dismissal or suspension
5 proceeding initiated pursuant to Section 44934 or 44934.1 may,
6 on petition of either the governing board or the employee, be
7 reviewed by a court of competent jurisdiction in the same manner
8 as a decision made by a hearing officer under Chapter 5
9 (commencing with Section 11500) of Part 1 of Division 3 of Title
10 2 of the Government Code. The court, on review, shall exercise
11 its independent judgment on the evidence. The proceeding shall
12 be set for hearing at the earliest possible date and shall take
13 precedence over all other cases, except older matters of the same
14 character and matters to which special precedence is given by law.

15 ~~SEC. 20.~~

16 *SEC. 21.* If the Commission on State Mandates determines that
17 this act contains costs mandated by the state, reimbursement to
18 local agencies and school districts for those costs shall be made
19 pursuant to Part 7 (commencing with Section 17500) of Division
20 4 of Title 2 of the Government Code.