

Assembly Bill No. 215

Passed the Assembly June 12, 2014

Chief Clerk of the Assembly

Passed the Senate June 9, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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 the governing board of a school district, if the governing board has given the above notice, based on written charges, to amend charges less than 90 days before the hearing on the charges only upon a showing of good cause. The bill would require that the employee 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, 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 the filing of written charges relating to immoral conduct, conviction of a felony or any crime involving moral turpitude, with incompetency due to mental disability, or 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, for dismissal or suspension proceedings that are not based solely on charges of egregious misconduct, 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, 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. This bill would provide separate hearing procedures for dismissal or suspension proceedings that are based solely on charges of egregious misconduct, as provided.

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.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares both of the following:

(a) Pupils, educators, school administrators, school boards, and school district employees need a certificated employee dismissal 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, 44943, and 44944. This authorization shall not apply to a school district that has adopted a collective bargaining agreement pursuant to subdivision (b) of Section 3543.2 of the Government Code.

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

44934. (a) This section shall apply to dismissal or suspension proceedings based on charges as specified in Section 44932 or 44933, including proceedings based on charges of egregious

misconduct in combination with other charges. Section 44934.1 shall apply to dismissal or suspension proceedings based solely on charges of egregious misconduct described in paragraph (1) of subdivision (a) of Section 44932.

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

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

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

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

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

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

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

(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 that there exists cause, as specified in paragraph (1) of subdivision (a) of Section 44932, for the dismissal or suspension of a permanent employee of the school district, the governing board of the school district may, upon majority vote, except as provided in this article if it deems the action necessary, give notice to the permanent employee of its intention to dismiss or suspend him or her at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing as provided in this article.

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

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

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

44935. (a) A report on the fitness of a certificated employee in a dismissal or suspension proceeding initiated pursuant to Section 44934 or 44934.1 shall not be received from a statewide

professional organization by a governing board unless the certificated employee shall have been given, prior to the preparation of the report in its final form, the opportunity to submit in writing his or her comments on the report and unless a copy of the report in final form is given to the certificated employee investigated at least 10 days prior to its submission to the governing board.

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

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

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

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

(c) The notice of dismissal or suspension given during the instructional year of the schoolsite where the employee is physically employed shall be in writing and be served upon the employee personally or by United States registered mail addressed to him or her at his or her last known address. A copy of the charges filed, containing the information required by Section 11503 of the Government Code, together with a copy of the provisions 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 for immediate suspension under this section. The motion shall include a memorandum of points and authorities setting forth law and argument supporting the employee's contention that the statement of charges does not set forth a sufficient basis for immediate suspension.

(2) The motion shall be served upon the governing board of the school district and filed with the Office of Administrative Hearings within 30 days after service upon the employee of the initial pleading in the matter. The governing board of the school district

shall have the right to serve and file a written response to the motion before or at the time of hearing.

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

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

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

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

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

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

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

(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 egregious misconduct, as

defined in paragraph (1) of subdivision (a) of Section 44932, the governing board of the school district may, if it deems such 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44941.1. Notwithstanding Section 44941, the notice of suspension and intention to dismiss that is based exclusively on charges of egregious misconduct as described in paragraph (1) of subdivision (a) of Section 44932, shall be in writing and served pursuant to Section 44936. A copy of the charges filed, containing the information required by Section 11503 of the Government Code, together with a copy of the provisions of this article, shall be attached to the notice. If the employee does not demand a

hearing within the 30-day period, he or she may be dismissed upon the expiration of 30 days after service of the notice.

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

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

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

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

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

(B) Where substantial progress has been made in completing the previously scheduled days of the hearing within the seven-month period but the hearing cannot be completed, for good cause shown, within the seven-month period, the period for completing the hearing may be extended by the presiding

administrative law judge. If the administrative law judge grants a continuance under this subparagraph, he or she shall establish a reasonable timetable for the completion of the hearing and the closing of the record. The hearing shall be initiated and conducted, and a decision made, in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the Commission on Professional Competence shall have all of the power granted to an agency pursuant to that chapter, except as described in this article.

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

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

(c) (1) The hearing provided for in this section shall be conducted by a Commission on Professional Competence, unless the parties submit a statement in writing to the Office of Administrative Hearings, indicating that both parties waive the right to convene a Commission on Professional Competence and stipulate to having the hearing conducted by a single administrative law judge. If the parties elect to waive a hearing before the Commission on Professional Competence, the hearing shall be initiated and conducted, and a decision made, in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the administrative law judge conducting the hearing shall have all the powers granted to a Commission on Professional Competence pursuant to that chapter, except as described in this article.

(2) If the parties elect not to waive a hearing before a Commission on Professional Competence, one member of the commission shall be selected by the employee, one member shall

be selected by the governing board of the school district, and one member shall be an administrative law judge of the Office of Administrative Hearings who shall be chairperson and a voting member of the commission and shall be responsible for assuring that the legal rights of the parties are protected at the hearing.

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

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

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

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

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

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

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

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

(A) That the employee should be dismissed.

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

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

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

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

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

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

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

(e) (1) If the member selected by the governing board of the school district or the member selected by the employee is employed

by any school district in this state, the member shall, during any service on a Commission on Professional Competence, continue to receive salary, fringe benefits, accumulated sick leave, and other leaves and benefits from the school district in which the member is employed, but shall receive no additional compensation or honorariums for service on the commission.

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

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

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

(2) If the Commission on Professional Competence determines that the employee should not be dismissed or suspended, the governing board of the school district shall pay the expenses of the hearing, including the cost of the administrative law judge, any costs incurred under paragraphs (2) and (3) of subdivision (e), the reasonable expenses, as determined by the administrative law judge, of the member selected by the governing board of the school

district and the member selected by the employee, including, but not limited to, payments or obligations incurred for travel, meals, and lodging, the cost of the substitute or substitutes, if any, for the member selected by the governing board of the school district and the member selected by the employee, and reasonable attorney's fees incurred by the employee.

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

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

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

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

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

44944.05. (a) In a dismissal or suspension proceeding initiated pursuant to Section 44934, in lieu of written discovery required pursuant to Section 11507.6 of the Government Code, the parties shall make disclosures as described in this section. This section shall not apply to dismissal or suspension proceedings initiated pursuant to Section 44934.1.

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

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

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

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

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

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

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

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

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

(B) The disclosure specified in subparagraph (A) shall be accompanied by a summary of the witness' expected testimony,

including a description of the facts and data considered by the witness; a description of the witness' qualifications, including a list of all publications authored in the previous 10 years; a list of all other cases in which, during the previous four years, the witness testified as an expert at a hearing or by deposition; and a statement of the compensation to be paid to the expert witness.

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

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

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

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

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

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

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

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

(c) In addition to the disclosures required by subdivision (a), the parties may obtain discovery by oral deposition in California, in accordance with Sections 2025.010 to 2025.620, inclusive, of the Code of Civil Procedure, except as described in this article. The school district may take the depositions of the employee and no more than four other witnesses, and the employee may take depositions of no more than five witnesses. Each witness deposition is limited to seven hours. An administrative law judge may allow

the parties to conduct additional depositions only upon a showing of good cause. If a motion to conduct additional depositions is granted by the administrative law judge, the employee shall be given a meaningful opportunity to respond to new evidence introduced as a result of the additional depositions. An order granting a motion for additional depositions shall not constitute an extraordinary circumstance or good cause for purposes of extending the deadlines set forth in paragraph (1) of subdivision (b) of Section 44944.

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

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

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

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

(b) Once the governing board of the school district has initiated dismissal or suspension proceedings pursuant to Section 44934.1, the process described in this section shall be the exclusive means of pursuing a dismissal or suspension for the acts or events constituting the charge of egregious misconduct, and these specific acts or events shall not be used to support any additional or subsequent notice of suspension or dismissal pursuant to Section 44934. Once the governing board of the school district has initiated dismissal or suspension proceedings pursuant to Section 44934.1, the process described in this section shall be the exclusive means of pursuing a dismissal or suspension against the certificated employee until a written decision has been reached by the administrative law judge pursuant to paragraph (1) of subdivision (e), the charges have been dismissed, or the dismissal or suspension proceeding has been settled or otherwise resolved. If a suspension initiated against an employee pursuant to Section 44934.1 is upheld, and a dismissal was not pursued on the same charges, the entry of judgment of the suspension under Section 44934.1 may

be considered as evidence to support a subsequent notice of dismissal based on other charges. If a suspension initiated against an employee pursuant to Section 44934.1 is upheld, but the employee prevailed on the dismissal proceeding based on the same charges, the entry of judgment of the suspension under Section 44934.1 shall not be considered as evidence to support a subsequent notice of dismissal based on other charges.

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

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

(B) The right of discovery of the parties shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party in a civil action brought in a superior court under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure. Notwithstanding any provision to the contrary, and except for the taking of oral depositions, no discovery shall occur later than 30 calendar days after the employee is served with a copy of the accusation pursuant to Section 11505 of the Government Code. In all cases, discovery shall be completed prior to seven calendar days before the date upon which the hearing commences. If any continuance is granted pursuant to Section 11524 of the Government Code, the time limitation for commencement of the hearing as provided in this subdivision shall be extended for a period of time equal to the continuance. The continuance or

continuances granted pursuant to Section 11524 of the Government Code, if any, shall not extend by more than a total of 30 days the deadline set forth in paragraph (1) of subdivision (d). The extension shall not include that period of time attributable to an unlawful refusal by either party to allow the discovery provided for in this section.

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

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

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

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

(A) That the employee should be dismissed.

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

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

(2) The decision of the administrative law judge that the employee should not be dismissed or suspended shall not be based on nonsubstantive procedural errors committed by the school

district or the governing board of the school district unless the errors are prejudicial errors.

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

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

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

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

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

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

(3) If either the governing board of the school district or the employee petitions a court of competent jurisdiction for review of the decision of the administrative law judge, the payment of the expenses of the hearing, including the cost of the administrative law judge required by this subdivision, shall not be stayed.

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

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

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

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

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

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

44945. The decision reached in a dismissal or suspension proceeding initiated pursuant to Section 44934 or 44934.1 may, on petition of either the governing board or the employee, be reviewed by a court of competent jurisdiction in the same manner as a decision made by a hearing officer under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The court, on review, shall exercise its independent judgment on the evidence. The proceeding shall

be set for hearing at the earliest possible date and shall take precedence over all other cases, except older matters of the same character and matters to which special precedence is given by law.

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

Approved _____, 2014

Governor