

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 375

Introduced by Assembly Member Buchanan

February 14, 2013

An act to amend ~~Section 44932~~ Sections 44932, 44934, 44936, 44939, 44940, 44941, and 44944 of, and to add Section 44944.2 to, the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 375, as amended, Buchanan. School employees: dismissal or suspension.

Existing

(1) *Existing* law prohibits a permanent employee from being dismissed except for one or more of specified causes, including, among other causes, immoral or unprofessional conduct. *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, for unprofessional conduct or unsatisfactory performance, at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing.*

This bill would specify that a governing board's notice to an employee of its intention to dismiss or suspend the employee, together with written charges filed or formulated pursuant to those procedures, shall be sufficient to initiate a hearing, as prescribed, and would specify that the governing board shall not be required to file or serve a separate accusation. The bill would revise various procedures, for providing notice of dismissal or suspension pursuant to those provisions, and would require that the notice only be given during the instructional

year of the schoolsite where the employee is physically employed, or during the summer session, if the employee is employed for that purpose. The bill would require that once a demand has been made for a hearing, the school district immediately notify the Office of Administrative Hearings. The bill would impose various requirements for the filing of a demand for a hearing and the conduct of hearings by the Office of Administrative Law. The bill would delete obsolete provisions relating to the suspension of a permanent employee based on knowing membership by the employee in the Communist Party.

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 for unprofessional conduct or unsatisfactory performance, 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 within 7 months from the date of the employee’s demand for a hearing. The bill would revise various procedures for the conduct of those hearings, as prescribed. The bill would require that, in a dismissal or suspension proceeding carried out under the above provisions, the parties make specified disclosures in lieu of certain written discovery, as prescribed, and would authorize the parties to obtain discovery by oral deposition.

(2) 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 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.

~~This bill would make nonsubstantive changes to this provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

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

1 SECTION 1. *The Legislature finds and declares the following:*

2 (a) *Pupils, educators, administrators, school boards, school*
3 *district employees, and judges need a teacher dismissal process*
4 *that is both fair and efficient.*

5 (b) *This act is intended to revise existing statutes in a manner*
6 *that will continue current practices, but reduce the time necessary*
7 *to complete the teacher dismissal process.*

8 ~~SECTION 1.~~

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

11 44932. (a) A permanent employee shall not be dismissed
12 except for one or more of the following causes:

13 (1) Immoral conduct.

14 (2) Unprofessional conduct.

15 (3) Commission, aiding, or advocating the commission of acts
16 of criminal syndicalism, as prohibited by Chapter 188 of the
17 Statutes of 1919, or in any amendment thereof.

18 (4) Dishonesty.

19 (5) Unsatisfactory performance.

20 (6) Evident unfitness for service.

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

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

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

7 (10) Violation of Section 51530 or conduct specified in Section
8 1028 of the Government Code, added by Chapter 1418 of the
9 Statutes of 1947.

10 ~~(11) Knowing membership by the employee in the Communist~~
11 ~~Party.~~

12 ~~(12)~~

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

15 (b) The governing board of a school district may suspend
16 without pay for a specific period of time on grounds of
17 unprofessional conduct a permanent certificated employee or, in
18 a school district with an average daily attendance of less than 250
19 pupils, a probationary employee, pursuant to the procedures
20 specified in Sections 44933, 44934, 44935, 44936, 44937, 44943,
21 and 44944. This authorization shall not apply to a school district
22 that has adopted a collective bargaining agreement pursuant to
23 subdivision (b) of Section 3543.2 of the Government Code.

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

26 44934. (a) Upon the filing of written charges, duly signed
27 and verified by the person filing them, with the governing board
28 of the school district, or upon a written statement of charges
29 formulated by the governing board, charging that there exists cause,
30 as specified in Section 44932 or 44933, for the dismissal or
31 suspension of a permanent employee of the district, the governing
32 board may, upon majority vote, except as provided in this article
33 if it deems the action necessary, give notice to the permanent
34 employee of its intention to dismiss or suspend him or her at the
35 expiration of 30 days from the date of service of the notice, unless
36 the employee demands a hearing as provided in this article.
37 Suspension proceedings may be initiated pursuant to this section
38 only if the governing board has not adopted a collective bargaining
39 agreement pursuant to subdivision (b) of Section 3543.2 of the
40 Government Code.

1 ~~Any~~

2 (b) Any written statement of charges of unprofessional conduct
3 or unsatisfactory performance shall specify instances of behavior
4 and the acts or omissions constituting the charge so that the teacher
5 will be able to prepare his or her defense. It shall, where applicable,
6 state the statutes and rules ~~which~~ that the teacher is alleged to have
7 violated, but it shall also set forth the facts relevant to each
8 occasion of alleged unprofessional conduct or unsatisfactory
9 performance.

10 (c) *If the governing board has given notice to a permanent*
11 *employee of its intention to dismiss or suspend him or her, based*
12 *upon written charges filed or formulated pursuant to this section,*
13 *the charges may be amended only upon motion before an*
14 *administrative law judge of the Office of Administrative Hearings.*
15 *The amendment of charges shall be substantially related to the*
16 *original charge and shall not result in any prejudice to the*
17 *responding party. A motion to amend shall be granted at least 90*
18 *days before the hearing on the charges.*

19 (d) *A governing board's notice to an employee of its intention*
20 *to dismiss or suspend him or her, together with written charges*
21 *filed or formulated pursuant to this section, shall be sufficient to*
22 *initiate a hearing under Section 11503 of the Government Code,*
23 *and the governing board shall not be required to file or serve a*
24 *separate accusation.*

25 ~~This~~

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

31 *SEC. 4. Section 44936 of the Education Code is amended to*
32 *read:*

33 44936. (a) *The notice of dismissal or suspension in a*
34 *proceeding initiated pursuant to Section 44934 shall ~~not be given~~*
35 *between May 15th and September 15th in any year. It only be given*
36 *during either of the following:*

37 (1) *The instructional year of the schoolsite where the employee*
38 *is physically employed.*

39 (2) *The summer session, if the employee is employed for that*
40 *purpose.*

1 (b) *The notice of dismissal or suspension* shall be in writing and
2 be served upon the employee personally or by United States
3 registered mail addressed to him *or her* at his *or her* last known
4 address. A copy of the charges filed, containing the information
5 required by Section 11503 of the Government Code, together with
6 a copy of the provisions of this article, shall be attached to the
7 notice.

8 *SEC. 5. Section 44939 of the Education Code is amended to*
9 *read:*

10 44939. (a) Upon the filing of written charges, duly signed
11 and verified by the person filing them with the governing board
12 of a school district, or upon a written statement of charges
13 formulated by the governing board, charging a permanent employee
14 of the district with immoral conduct, conviction of a felony or of
15 any crime involving moral turpitude, with incompetency due to
16 mental disability, *or* with willful refusal to perform regular
17 assignments without reasonable cause, as prescribed by reasonable
18 rules and regulations of the employing school district, ~~with~~
19 ~~violation of Section 51530, with knowing membership by the~~
20 ~~employee in the Communist Party or with violation of any provision~~
21 ~~in Sections 7001 to 7007, inclusive,~~ the governing board may, if
22 it deems ~~such~~ *that* action necessary, immediately suspend the
23 employee from his *or her* duties and give notice to him *or her* of
24 his *or her* suspension, and that 30 days after service of the notice,
25 he *or she* will be dismissed, unless he *or she* demands a hearing.

26 ~~If the permanent employee is suspended upon charges of~~
27 ~~knowing membership by the employee in the Communist Party or~~
28 ~~for any violation of Section 7001, 7002, 7003, 7006, 7007, or~~
29 ~~51530, he may within 10 days after service upon him of notice of~~
30 ~~such suspension file with the governing board a verified denial,~~
31 ~~in writing, of the charges. In such event the permanent employee~~
32 ~~who demands a hearing within the 30-day period shall continue~~
33 ~~to be paid his regular salary during the period of suspension and~~
34 ~~until the entry of the decision of the Commission on Professional~~
35 ~~Competence, if and during such time as he furnishes to the school~~
36 ~~district a suitable bond, or other security acceptable to the~~
37 ~~governing board, as a guarantee that the employee will repay to~~
38 ~~the school district the amount of salary so paid to him during the~~
39 ~~period of suspension in case the decision of the Commission on~~
40 ~~Professional Competence is that he shall be dismissed. If it is~~

1 ~~determined that the employee may not be dismissed, the school~~
2 ~~board shall reimburse the employee for the cost of the bond.~~

3 *(b) (1) An employee who has been placed on suspension*
4 *pursuant to this section may serve and file with the Office of*
5 *Administrative Hearings a motion for immediate reversal of*
6 *suspension. Review of a motion filed pursuant to this section shall*
7 *be limited to a determination as to whether the facts as alleged in*
8 *the statement of charges, if true, are sufficient to constitute a basis*
9 *for immediate suspension under this section. The motion shall*
10 *include a memorandum of points and authorities setting forth law*
11 *and argument supporting the employee's contention that the*
12 *statement of charges does not set forth a sufficient basis for*
13 *immediate suspension.*

14 *(2) The motion shall be served upon the governing board and*
15 *filed within 30 days after service upon the employee of the initial*
16 *pleading in the matter. The governing board shall have the right*
17 *to serve and file a written response to the motion before or at the*
18 *time of hearing.*

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

22 *(4) The administrative law judge shall, no later than 15 days*
23 *after the hearing, issue an order denying or granting the motion.*
24 *The order shall be in writing, and a copy of the order shall be*
25 *served by the Office of Administrative Hearings upon the parties.*
26 *The grant or denial of the motion shall be without prejudice to*
27 *consideration by the Commission on Professional Competence,*
28 *based upon the full evidentiary record before it, of the validity of*
29 *the grounds for dismissal.*

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

35 *(6) A motion made pursuant to the this section shall be the*
36 *exclusive means of obtaining interlocutory review of suspension*
37 *pending dismissal. The grant or denial of the motion shall be*
38 *without prejudice to consideration by the Commission on*
39 *Professional Competence, based upon the full evidentiary record*
40 *before it, of the validity of the grounds for suspension or dismissal.*

1 *SEC. 6. Section 44940 of the Education Code is amended to*
2 *read:*

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

14 (b) For purposes of this section, “charged with an optional leave
15 of absence offense” is defined to mean a charge by complaint,
16 information, or indictment filed in a court of competent jurisdiction
17 with the commission of any controlled substance offense as defined
18 in Section 44011 or 87011, ~~or a violation or attempted violation~~
19 ~~of Section 187 of the Penal Code~~, or Sections 11357 to 11361,
20 inclusive, *or* Section 11363, 11364, or 11370.1 of the Health and
21 Safety Code, insofar as these sections relate to any controlled
22 substances ~~except marijuana, mescaline, peyote, or~~
23 ~~tetrahydrocannabinols.~~

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

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

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

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

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

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

24 *SEC. 7. Section 44941 of the Education Code is amended to*
25 *read:*

26 44941. (a) The notice of suspension and intention to dismiss,
27 shall be in writing and be served upon the employee personally or
28 by United States registered mail addressed to the employee at his
29 *or her* last known address. A copy of the charges filed, containing
30 the information required by Section 11503 of the Government
31 Code, together with a copy of the provisions of this article, shall
32 be attached to the notice. If the employee does not demand a
33 hearing within the 30-day period, he *or she* may be dismissed upon
34 the expiration of 30 days after service of the notice.

35 (b) *An employee who has demanded a hearing pursuant to this*
36 *section shall be deemed to have fulfilled the conditions for*
37 *requesting a hearing under this article and under Sections 11505*
38 *and 11506 of the Government Code, and shall not have waived*
39 *any right for failure to file any other or subsequent notice of*
40 *defense or request for hearing.*

1 *SEC. 8. Section 44944 of the Education Code is amended to*
2 *read:*

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

1 *Commission of Professional Competence shall have all of the*
2 *power granted to an agency pursuant to that chapter, except as*
3 *described in this article.*

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

11 ~~(3) The time periods in this section and of Chapter 5~~
12 ~~(commencing with Section 11500) of Part 1 of Division 3 of Title~~
13 ~~2 of the Government Code and of Title 4 (commencing with~~
14 ~~Section 2016.010) of Part 4 of the Code of Civil Procedure shall~~
15 ~~not be applied so as to deny discovery in a hearing conducted~~
16 ~~pursuant to this section.~~

17 ~~(4) The superior court of the county in which the hearing will~~
18 ~~be held may, upon motion of the party seeking discovery, suspend~~
19 ~~the hearing so as to comply with the requirement of the preceding~~
20 ~~paragraph.~~

21 ~~(5)~~

22 (2) (A) No witness shall 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 ~~prior to~~ *before* the date of the filing of the notice, *except*
26 *as provided in subparagraph (B)*. Evidence of records regularly
27 kept by the governing board concerning the employee may be
28 introduced, but no decision relating to the dismissal or suspension
29 of any employee shall be made based on charges or evidence of
30 any nature relating to matters occurring more than four years ~~prior~~
31 ~~to~~ *before* the filing of the notice, *except as provided in*
32 *subparagraph (B)*.

33 (B) *Testimony and evidence relating to matters that occurred*
34 *more than four years before the date of the filing of the notice*
35 *pursuant to Section 44934 may not be considered, received as*
36 *evidence, or relied upon, except as deemed relevant by the Office*
37 *of Administrative Hearings to charges that involve any act as*
38 *described in Section 44010 of this code, and Sections 11165.2 to*
39 *11165.6, inclusive, of the Penal Code.*

1 (b) (1) The hearing provided for in this section shall be
 2 conducted by a Commission on Professional Competence, *unless*
 3 *the parties submit a statement in writing to the Office of*
 4 *Administrative Hearings, indicating that both parties waive the*
 5 *right to convene a Commission on Professional Competence and*
 6 *stipulate to having the hearing conducted by a single*
 7 *Administrative Law Judge.* ~~One member~~

8 (2) *If the parties elect not to waive a hearing before a*
 9 *Commission on Professional Competence, one member of the*
 10 *commission shall be selected by the employee, one member shall*
 11 *be selected by the governing board, and one member shall be an*
 12 *administrative law judge of the Office of Administrative Hearings*
 13 *who shall be chairperson and a voting member of the commission*
 14 *and shall be responsible for assuring that the legal rights of the*
 15 *parties are protected at the hearing.* ~~If either the governing board~~
 16 ~~or the employee for any reason fails to select a commission member~~
 17 ~~at least seven calendar days prior to the date of the hearing, the~~
 18 ~~failure~~

19 (3) *The governing board and the employee shall select*
 20 *commission members no later than 45 days before the date set for*
 21 *hearing, and shall serve notice of their selection upon all other*
 22 *parties and upon the Office of Administrative Hearings. Failure*
 23 *to meet this deadline shall constitute a waiver of the right to*
 24 *selection, and the county board of education or its specific designee*
 25 *shall immediately make the selection. If the county board of*
 26 *education is also the governing board of the school district or has*
 27 *by statute been granted the powers of a governing board, the*
 28 *selection shall be made by the Superintendent, who shall be*
 29 *reimbursed by the school district for all costs incident to the*
 30 *selection.*

31 (4) *Any party who believes that a selected commission member*
 32 *is not qualified may file an objection, including a statement*
 33 *describing the basis for the objection, with the Office of*
 34 *Administrative Hearings, and serve the objection and statement*
 35 *upon all other parties, within 10 days of the date that the notice*
 36 *of selection is filed. Within seven days after the filing of any*
 37 *objection, the Administrative Law Judge assigned to the matter*
 38 *shall rule on the objection, or convene a teleconference with the*
 39 *parties for argument.*

40 (2)

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

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

12 (A) That the employee should be dismissed.

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

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

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

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

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

29 (5) The *governing* board may adopt from time to time rules and
30 procedures not inconsistent with this section as may be necessary
31 to effectuate this section.

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

34 (d) (1) If the member selected by the governing board or the
35 member selected by the employee is employed by any school
36 district in this state, the member shall, during any service on a
37 Commission on Professional Competence, continue to receive
38 salary, fringe benefits, accumulated sick leave, and other leaves
39 and benefits from the district in which the member is employed,

1 but shall receive no additional compensation or honorariums for
2 service on the commission.

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

8 (e) (1) If the Commission on Professional Competence
9 determines that the employee should be dismissed or suspended,
10 the governing board and the employee shall share equally the
11 expenses of the hearing, including the cost of the administrative
12 law judge. The state shall pay any costs incurred under paragraph
13 (2) of subdivision (d), the reasonable expenses, as determined by
14 the administrative law judge, of the member selected by the
15 governing board and the member selected by the employee,
16 including, but not limited to, payments or obligations incurred for
17 travel, meals, and lodging, and the cost of the substitute or
18 substitutes, if any, for the member selected by the governing board
19 and the member selected by the employee. The Controller shall
20 pay all claims submitted pursuant to this paragraph from the
21 General Fund, and may prescribe reasonable rules, regulations,
22 and forms for the submission of the claims. The employee and the
23 governing board shall pay their own attorney’s fees.

24 (2) If the Commission on Professional Competence determines
25 that the employee should not be dismissed or suspended, the
26 governing board shall pay the expenses of the hearing, including
27 the cost of the administrative law judge, any costs incurred under
28 paragraph (2) of subdivision (d), the reasonable expenses, as
29 determined by the administrative law judge, of the member selected
30 by the governing board and the member selected by the employee,
31 including, but not limited to, payments or obligations incurred for
32 travel, meals, and lodging, the cost of the substitute or substitutes,
33 if any, for the member selected by the governing board and the
34 member selected by the employee, and reasonable attorney’s fees
35 incurred by the employee.

36 (3) As used in this section, “reasonable expenses” shall not be
37 deemed “compensation” within the meaning of subdivision (d).

38 (4) If either the governing board or the employee petitions a
39 court of competent jurisdiction for review of the decision of the

1 commission, the payment of expenses to members of the
2 commission required by this subdivision shall not be stayed.

3 (5) ~~(A)~~—If the decision of the commission is finally reversed or
4 vacated by a court of competent jurisdiction, either the state, having
5 paid the commission members' expenses, shall be entitled to
6 reimbursement from the governing board for those expenses, or
7 the governing board, having paid the expenses, shall be entitled
8 to reimbursement from the state.

9 ~~(B)~~ Additionally, either the employee, having paid a portion of
10 the expenses of the hearing, including the cost of the administrative
11 law judge, shall be entitled to reimbursement from the governing
12 board for the expenses, or the governing board, having paid its
13 portion and the employee's portion of the expenses of the hearing,
14 including the cost of the administrative law judge, shall be entitled
15 to reimbursement from the employee for that portion of the
16 expenses.

17 (f) The hearing provided for in this section shall be conducted
18 in a place selected by agreement among the members of the
19 commission. In the absence of agreement, the place shall be
20 selected by the administrative law judge.

21 *SEC. 9. Section 44944.2 is added to the Education Code, to*
22 *read:*

23 *44944.2. (a) In a dismissal or suspension proceeding under*
24 *Section 44944, in lieu of written discovery required pursuant to*
25 *Section 11507.6 of the Government Code, the parties shall make*
26 *disclosures as described in this section.*

27 *(1) An initial disclosure shall comply with the following*
28 *requirements:*

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

31 *(i) The name and, if known, the address and telephone number*
32 *of each individual likely to have discoverable information, along*
33 *with the subjects of that information, that the disclosing party may*
34 *use to support its claims or defenses, unless the use would be solely*
35 *for impeachment purposes.*

36 *(ii) A copy of all documents, electronically stored information,*
37 *and tangible items that the disclosing party has in its possession,*
38 *custody, or control and may use to support its claims or defenses,*
39 *unless the use would be solely for impeachment.*

1 (B) The school district shall make its initial disclosures within
2 30 days of the date of service of the notice of intention to dismiss
3 or suspend. The employee shall make his or her initial disclosures
4 within 30 days of the date of service of the school district's initial
5 disclosures.

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

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

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

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

27 (B) The disclosure specified in subparagraph (A) shall be
28 accompanied by a summary of the witness's expected testimony,
29 including a description of the facts and data considered by the
30 witness; a description of the witness's qualifications, including a
31 list of all publications authored in the previous 10 years; a list of
32 all other cases in which, during the previous four years, the witness
33 testified as an expert at a hearing or by deposition; and a statement
34 of the compensation to be paid to the expert witness.

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

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

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

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

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

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

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

17 (ii) These objections shall be decided on the first day of hearing,
18 or at a prehearing conference conducted pursuant to Section
19 11511.5 of the Government Code. Documents and individuals not
20 timely disclosed without good cause shall be precluded from
21 admission at the hearing.

22 (b) In addition to the disclosures required by subdivision (a),
23 the parties may obtain discovery by oral deposition in California,
24 in accordance with Sections 2025.010 to 2025.620, inclusive, of
25 the Code of Civil Procedure, except as described in this article.
26 The school district may take the depositions of the employee and
27 no more than four other witnesses, and the employee may take
28 depositions of no more than five witnesses. Each witness deposition
29 is limited to seven hours.

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

38 SEC. 10. If the Commission on State Mandates determines that
39 this act contains costs mandated by the state, reimbursement to
40 local agencies and school districts for those costs shall be made

- 1 *pursuant to Part 7 (commencing with Section 17500) of Division*
- 2 *4 of Title 2 of the Government Code.*

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