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AMENDED IN ASSEMBLY MAY 6, 2013

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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 375

Introduced by Assembly Member Buchanan
(Principal coauthor: Senator Padilla)
(Coauthor: Assembly Member Muratsuchi)

February 14, 2013

An act to amend 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: *hearing*.

(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 require that a ~~governing board's~~ notice *of the governing board of the school district* to an employee of its intention

to dismiss or suspend the employee, together with written charges filed or formulated pursuant to those procedures, be sufficient to initiate a hearing, as prescribed, and would prohibit the governing board *of the school district* from being required to file or serve a separate accusation. The bill would revise various procedures for providing notice of dismissal or suspension and would authorize a notice of dismissal or suspension to be given at any time of year, except a notice for a proceeding involving only charges of unsatisfactory performance, which would only be given during the instructional year of the schoolsite where the employee is physically employed. 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 Hearings. 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.

(2) 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.

(3) 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 by a closing of the record within 7 months from the date of the employee’s demand for a hearing. The bill would require that, if the record cannot be closed within that timeframe, the charges be dismissed without prejudice to the governing board of the school district to refile, as specified. 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. 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.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

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

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

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

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

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

14 (1) Immoral conduct.

15 (2) Unprofessional conduct.

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

19 (4) Dishonesty.

20 (5) Unsatisfactory performance.

21 (6) Evident unfitness for service.

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

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

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

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

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

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

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

25 44934. (a) Upon the filing of written charges, duly signed and
26 verified by the person filing them, with the governing board of the
27 school district, or upon a written statement of charges formulated
28 by the governing ~~board~~, *board of the school district*, charging that
29 there exists cause, as specified in Section 44932 or 44933, for the
30 dismissal or suspension of a permanent employee of the *school*
31 district, the governing board *of the school district* may, upon
32 majority vote, except as provided in this article if it deems the
33 action necessary, give notice to the permanent employee of its
34 intention to dismiss or suspend him or her at the expiration of 30
35 days from the date of service of the notice, unless the employee
36 demands a hearing as provided in this article. Suspension
37 proceedings may be initiated pursuant to this section only if the
38 governing board *of the school district* has not adopted a collective
39 bargaining agreement pursuant to subdivision (b) of Section 3543.2
40 of the Government Code.

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

9 (c) If the governing board of the school district has given notice
10 to a permanent employee of its intention to dismiss or suspend
11 him or her, based upon written charges filed or formulated pursuant
12 to this section, the charges may be amended only upon motion
13 before an administrative law judge of the Office of Administrative
14 Hearings. The amendment of charges shall not result in any
15 prejudice to the responding party. No motion to amend shall be
16 granted less than 90 days before the hearing on the charges if it
17 would extend the close of the record beyond the seven-month
18 deadline pursuant to paragraph (1) of subdivision (a) of Section
19 44944.

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

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

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

34 44936. (a) The notice of dismissal or suspension in a
35 proceeding initiated pursuant to Section 44934 may be given at
36 any time of year.

37 (b) Notwithstanding subdivision (a), the notice of dismissal or
38 suspension in a proceeding involving only charges of unsatisfactory
39 performance initiated pursuant to Section 44934 shall only be

1 given during the instructional year of the schoolsite where the
2 employee is physically employed.

3 (c) The notice of dismissal or suspension *given during the*
4 *instructional year of the schoolsite where the employee is*
5 *physically employed* shall be in writing and be served upon the
6 employee personally *or by United States registered mail addressed*
7 *to him or her* at his or her last known address. A copy of the
8 charges filed, containing the information required by Section 11503
9 of the Government Code, together with a copy of the provisions
10 of this article, shall be attached to the notice.

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

18 SEC. 5. Section 44939 of the Education Code is amended to
19 read:

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

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

1 include a memorandum of points and authorities setting forth law
2 and argument supporting the employee’s contention that the
3 statement of charges does not set forth a sufficient basis for
4 immediate suspension.

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

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

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

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

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

33 SEC. 6. Section 44940 of the Education Code is amended to
34 read:

35 44940. (a) For purposes of this section, “charged with a
36 mandatory leave of absence offense” is defined to mean charged
37 by complaint, information, or indictment filed in a court of
38 competent jurisdiction with the commission of any sex offense as
39 defined in Section 44010, with a violation or attempted violation
40 of Section 187 of the Penal Code, or with the commission of any

1 offense involving aiding or abetting the unlawful sale, use, or
2 exchange to minors of controlled substances listed in Schedule I,
3 II, or III, as contained in Sections 11054, 11055, and 11056 of the
4 Health and Safety Code.

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

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

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

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

31 (e) (1) If a certificated employee of a school district is charged
32 with an optional leave of absence offense as defined in subdivision
33 (b), the governing board of the school district may immediately
34 place the employee upon compulsory leave in accordance with the
35 procedure in this section and Section 44940.5. If any certificated
36 employee is charged with an offense deemed to fall into both the
37 mandatory and the optional leave of absence categories, as defined
38 in subdivisions (a) and (b), that offense shall be treated as a
39 mandatory leave of absence offense for purposes of this section.
40 No later than 10 days after receipt of the complaint, information,

1 or indictment described by subdivision (a), the school district shall
2 forward a copy to the Commission on Teacher Credentialing.

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

10 SEC. 7. Section 44941 of the Education Code is amended to
11 read:

12 44941. (a) The notice of suspension and intention to ~~dismiss,~~
13 ~~dismiss~~ shall be in writing and be served ~~upon the employee~~
14 ~~personally or by United States registered mail addressed to the~~
15 ~~employee at his or her last known address pursuant to Section~~
16 ~~44936.~~ A copy of the charges filed, containing the information
17 required by Section 11503 of the Government Code, together with
18 a copy of the provisions of this article, shall be attached to the
19 notice. If the employee does not demand a hearing within the
20 30-day period, he or she may be dismissed upon the expiration of
21 30 days after service of the notice.

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

26 SEC. 8. Section 44944 of the Education Code is amended to
27 read:

28 44944. (a) (1) In a dismissal or suspension proceeding initiated
29 pursuant to Section 44934, if a hearing is requested by the
30 employee, the hearing shall be commenced within six months from
31 the date of the employee's demand for a hearing, ~~and the hearing~~
32 ~~shall be completed by a closing of the record within seven months~~
33 ~~from the date of the employee's demand for a hearing.~~ A
34 *continuance shall not extend the date for the commencement of*
35 *the hearing more than six months from the date of the employee's*
36 *request for a hearing, except for extraordinary circumstances, as*
37 *determined by the administrative law judge. If extraordinary*
38 *circumstances are found that extend the date for the commencement*
39 *of the hearing, the deadline for concluding the hearing and closing*
40 *the record pursuant to this subdivision shall be extended for a*

1 *period of time equal to the continuance.* The hearing date shall be
2 established after consultation with the employee and the governing
3 board, or their representatives. ~~The hearing date may be continued~~
4 ~~in accordance with Sections 11505 and 11524 of the Government~~
5 ~~Code, except that no representatives, except that, if the parties are~~
6 ~~not able to reach agreement on a date, the Office of Administrative~~
7 ~~Hearings shall unilaterally set a date in compliance with this~~
8 ~~section. The hearing shall be completed by a closing of the record~~
9 ~~within seven months of the date of the employee's demand for a~~
10 ~~hearing. A continuance shall not extend the date for the close of~~
11 ~~the record more than seven months from the date of the employee's~~
12 ~~request for a hearing, except for extraordinary circumstances, as~~
13 ~~determined by the administrative law judge, or, where substantial~~
14 ~~progress has been made in completing the previously scheduled~~
15 ~~days of the hearing within the seven-month period but the hearing~~
16 ~~cannot be completed, for good cause shown, within the~~
17 ~~seven-month period, the period for completing the hearing may~~
18 ~~be extended by the presiding administrative law judge for a period~~
19 ~~not to exceed 30 days.~~ The hearing shall be initiated and conducted,
20 and a decision made, in accordance with Chapter 5 (commencing
21 with Section 11500) of Part 1 of Division 3 of Title 2 of the
22 Government Code, and the Commission of Professional
23 Competence shall have all of the power granted to an agency
24 pursuant to that chapter, except as described in this article.

25 (2) If the record cannot be closed within the timeframe
26 established by paragraph (1), the charges shall be dismissed without
27 prejudice to the governing board to refile within 30 days a notice
28 of dismissal on the same charges.

29 (3) (A) ~~No~~A witness shall *not* be permitted to testify at the
30 hearing except upon oath or affirmation. No testimony shall be
31 given or evidence introduced relating to matters that occurred more
32 than four years before the date of the filing of the notice, except
33 ~~as provided in subparagraph (B).~~ Evidence of records regularly
34 ~~kept by the governing board concerning the employee may be~~
35 ~~introduced, but no decision relating to the dismissal or suspension~~
36 ~~of any employee shall be made based on charges or evidence of~~
37 ~~any nature relating to matters occurring more than four years before~~
38 ~~the filing of the notice, except as provided in subparagraph (B)~~
39 ~~allegations of an act described in Section 44010 of this code or~~
40 ~~Sections 11165.2 to 11165.6, inclusive, of the Penal Code.~~

1 ~~(B) Testimony and evidence relating to matters that occurred~~
2 ~~more than four years before the date of the filing of the notice~~
3 ~~pursuant to Section 44934 may not be considered, received as~~
4 ~~evidence, or relied upon, except as deemed relevant by the~~
5 ~~administrative law judge to charges that involve any act as~~
6 ~~described in Section 44010 of this code, and Sections 11165.2 to~~
7 ~~11165.6, inclusive, of the Penal Code.~~

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

16 (b) (1) The hearing provided for in this section shall be
17 conducted by a Commission on Professional Competence, unless
18 the parties submit a statement in writing to the Office of
19 Administrative Hearings, indicating that both parties waive the
20 right to convene a Commission on Professional Competence and
21 stipulate to having the hearing conducted by a single administrative
22 law judge. *If the parties elect to waive a hearing before the*
23 *Commission on Professional Competence, the hearing shall be*
24 *initiated and conducted, and a decision made, in accordance with*
25 *Chapter 5 (commencing with Section 11500) of Part 1 of Division*
26 *3 of Title 2 of the Government Code and the administrative law*
27 *judge conducting the hearing shall have all the powers granted to*
28 *a Commission on Professional Competence pursuant to that*
29 *chapter, except as described in this article.*

30 (2) If the parties elect not to waive a hearing before a
31 Commission on Professional Competence, one member of the
32 commission shall be selected by the employee, one member shall
33 be selected by the governing board, and one member shall be an
34 administrative law judge of the Office of Administrative Hearings
35 who shall be chairperson and a voting member of the commission
36 and shall be responsible for assuring that the legal rights of the
37 parties are protected at the hearing.

38 (3) The governing board and the employee shall select
39 ~~commission~~ *Commission on Professional Competence* members
40 no later than 45 days before the date set for hearing, and shall serve

1 notice of their selection upon all other parties and upon the Office
2 of Administrative Hearings. Failure to meet this deadline shall
3 constitute a waiver of the right to selection, and the county board
4 of education or its specific designee shall immediately make the
5 selection. If the county board of education is also the governing
6 board of the school district or has by statute been granted the
7 powers of a governing board, the selection shall be made by the
8 Superintendent, who shall be reimbursed by the school district for
9 all costs incident to the selection.

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

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

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

30 (A) That the employee should be dismissed.

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

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

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

39 (3) ~~The commission~~ *Commission on Professional Competence*
40 shall not have the power to dispose of the charge of dismissal by

1 imposing probation or other alternative sanctions. The imposition
2 of suspension pursuant to subparagraph (B) of paragraph (1) shall
3 be available only in a suspension proceeding authorized pursuant
4 to subdivision (b) of Section 44932 or Section 44933.

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

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

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

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

20 (2) If the member selected is a retired employee, the member
21 shall receive pay at a reasonable hourly rate not to exceed the
22 average hourly rate of a substitute employee in the same discipline
23 *the daily substitute teacher rate in the school district that is a party*
24 *to the hearing.* Service on a ~~commission~~ *Commission on*
25 *Professional Competence* shall not be credited toward retirement
26 benefits.

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

32 (e) (1) If the Commission on Professional Competence
33 determines that the employee should be dismissed or suspended,
34 the governing board and the state shall share equally the expenses
35 of the hearing, including the cost of the administrative law judge.
36 The state shall pay any costs incurred under paragraphs (2) and
37 (3) of subdivision (d), the reasonable expenses, as determined by
38 the administrative law judge, of the member selected by the
39 governing board and the member selected by the employee,
40 including, but not limited to, payments or obligations incurred for

1 travel, meals, and lodging, and the cost of the substitute or
 2 substitutes, if any, for the member selected by the governing board
 3 and the member selected by the employee. The Controller shall
 4 pay all claims submitted pursuant to this paragraph from the
 5 General Fund, and may prescribe reasonable rules, regulations,
 6 and forms for the submission of the claims. The employee and the
 7 governing board shall pay their own attorney’s fees.

8 (2) If the Commission on Professional Competence determines
 9 that the employee should not be dismissed or suspended, the
 10 governing board shall pay the expenses of the hearing, including
 11 the cost of the administrative law judge, any costs incurred under
 12 paragraphs (2) and (3) of subdivision (d), the reasonable expenses,
 13 as determined by the administrative law judge, of the member
 14 selected by the governing board and the member selected by the
 15 employee, including, but not limited to, payments or obligations
 16 incurred for travel, meals, and lodging, the cost of the substitute
 17 or substitutes, if any, for the member selected by the governing
 18 board and the member selected by the employee, and reasonable
 19 attorney’s fees incurred by the employee.

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

22 (4) If either the governing board or the employee petitions a
 23 court of competent jurisdiction for review of the decision of the
 24 ~~commission~~, *Commission on Professional Competence*, the
 25 payment of expenses to members of the commission required by
 26 this subdivision shall not be stayed.

27 (5) If the decision of the ~~commission~~ *Commission on*
 28 *Professional Competence* is finally reversed or vacated by a court
 29 of competent jurisdiction, either the state, having paid the
 30 commission members’ expenses, shall be entitled to reimbursement
 31 from the governing board for those expenses, or the governing
 32 board, having paid the expenses, shall be entitled to reimbursement
 33 from the state.

34 (f) The hearing provided for in this section shall be conducted
 35 in a place selected by agreement among the members of the
 36 ~~commission~~ *Commission on Professional Competence*. In the
 37 absence of agreement, the place shall be selected by the
 38 administrative law judge.

39 SEC. 9. Section 44944.2 is added to the Education Code, to
 40 read:

1 44944.2. (a) In a dismissal or suspension proceeding under
2 Section 44944, in lieu of written discovery required pursuant to
3 Section 11507.6 of the Government Code, the parties shall make
4 disclosures as described in this section.

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

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

9 (i) The name and, if known, the address and telephone number
10 of each individual likely to have discoverable information, along
11 with the subjects of that information, that the disclosing party may
12 use to support its claims or defenses, unless the use would be solely
13 for impeachment purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (b) In addition to the disclosures required by subdivision (a),
39 the parties may obtain discovery by oral deposition in California,
40 in accordance with Sections 2025.010 to 2025.620, inclusive, of

1 the Code of Civil Procedure, except as described in this article.
2 The school district may take the depositions of the employee and
3 no more than four other witnesses, and the employee may take
4 depositions of no more than five witnesses. Each witness deposition
5 is limited to seven hours.

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

14 SEC. 10. If the Commission on State Mandates determines
15 that this act contains costs mandated by the state, reimbursement
16 to local agencies and school districts for those costs shall be made
17 pursuant to Part 7 (commencing with Section 17500) of Division
18 4 of Title 2 of the Government Code.