

AMENDED IN ASSEMBLY MAY 15, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 947

Introduced by Assembly Member ~~Olsen~~ *Beth Gaines*
(Coauthors: Assembly Members *Allen, Conway, Grove, Harkey, Jones,*
***Mansoor, Morrell, Nestande, and Wilk*)**

February 22, 2013

An act to amend Sections 44955 and 44956 of, and to add Section 44955.2 to, the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 947, as amended, ~~Olsen~~ *Beth Gaines*. School employees: teachers: termination: reappointment: seniority deviation.

Existing law provides that, when the services of employees are terminated pursuant to a reduction in workforce, a school district is required to terminate the employees in order of seniority. Existing law further provides those employees with a preferred right to reappointment and an opportunity for substitute service in order of seniority. Existing law authorizes a school district to deviate from the order of seniority for those purposes for specified reasons, including compliance with constitutional requirements related to equal protection of the laws.

This bill would provide additional reasons for which a school district may deviate from terminating employees in order of seniority, including authorizing school districts to terminate an employee on the basis of performance evaluations and on the basis that the employee is assigned to a schoolsite that *has implemented specific models of intervention and* has been selected by the governing board *of the school district* for

exemption from certificated reductions in workforce, based upon the needs of *pupils* in the educational program. The bill would provide an exception to this authorization for an employee who has 18 months or less from his or her date of retirement, or is on medical leave.

The bill would prohibit a school district that deviates from the order of seniority for purposes of terminating a certificated employee from taking into consideration whether an employee has exercised any of the rights guaranteed in the Educational Employment Relations Act.

The bill would also authorize a school district, during the period of an employee’s preferred right to reappointment, to deviate from the order of seniority in offering the opportunity for substitute service for either of specified reasons.

The bill would specify that the equal protection exception to the general requirement that terminations and reappointments occur in order of seniority applies to equal protection as that protection relates to pupils.

The bill would make various nonsubstantive and clarifying changes.

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

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

1 SECTION 1. Section 44955 of the Education Code is amended
 2 to read:

3 44955. (a) A permanent employee shall not be deprived of his
 4 or her position for causes other than those specified in Sections
 5 44907 and 44923, and Sections 44932 to 44947, inclusive, and a
 6 probationary employee shall not be deprived of his or her position
 7 for cause other than as specified in Sections 44948 to 44949,
 8 inclusive.

9 (b) (1) If in any school year the average daily attendance in all
 10 of the schools of a *school* district for the first six months in which
 11 school is in session has declined below the corresponding period
 12 of either of the previous two school years, if the governing board
 13 *of the school district* determines that attendance in a *school* district
 14 will decline in the following year as a result of the termination of
 15 an interdistrict tuition agreement as described in Section 46304,
 16 if a particular kind of service is to be reduced or discontinued not
 17 later than the beginning of the following school year, or if the
 18 amendment of state law requires the modification of curriculum,

1 and if in the opinion of the governing board of the *school* district
2 it has become necessary by reason of any of these conditions to
3 decrease the number of permanent employees in the *school* district,
4 the governing board of the *school district* may terminate the
5 services of not more than a corresponding percentage of the
6 certificated employees of the *school* district, permanent as well as
7 probationary, at the close of the school year. Except as otherwise
8 provided by statute, the services of a permanent employee shall
9 not be terminated under the provisions of this section while any
10 probationary employee, or any other employee with less seniority,
11 is retained to render a service that the permanent employee is
12 certificated and competent to render.

13 (2) In computing a decline in average daily attendance for
14 purposes of this section for a newly formed or reorganized school
15 district, each school of the *school* district shall be deemed to have
16 been a school of the newly formed or reorganized *school* district
17 for both of the two previous school years.

18 (3) As between employees who first rendered paid service to
19 the *school* district on the same date, the governing board of the
20 *school district* shall determine the order of termination solely on
21 the basis of needs of the *school* district and the pupils, including
22 distinctions based upon performance evaluations. Upon the request
23 of any employee whose order of termination is so determined, the
24 governing board of the *school district* shall furnish in writing no
25 later than five days before the commencement of the hearing held
26 in accordance with Section 44949, a statement of the specific
27 criteria used in determining the order of termination and the
28 application of the criteria in ranking each employee relative to the
29 other employees in the group. This requirement that the governing
30 board of the *school district* provide, on request, a written statement
31 of reasons for determining the order of termination shall not be
32 interpreted to give affected employees any legal right or interest
33 that would not exist without such a requirement.

34 (c) Notice of termination of services shall be given before May
35 15 in the manner prescribed in Section 44949, and services of
36 employees shall be terminated in the inverse of the order in which
37 they were employed, as determined by the *governing* board of the
38 *school district* in accordance with Sections 44844 and 44845. In
39 the event that a permanent or probationary employee is not given
40 the notices and a right to a hearing as provided for in Section

1 44949, he or she shall be deemed reemployed for the ensuing
2 school year.

3 (d) Notwithstanding subdivision (b), and except as specified in
4 subdivision (e), a school district may deviate from terminating a
5 certificated employee in order of seniority for any of the following
6 reasons:

7 (1) The *school* district demonstrates a specific need for personnel
8 to teach a specific course or course of study, or to provide services
9 authorized by a services credential with a specialization in either
10 pupil personnel services or health for a school nurse, and that the
11 certificated employee has special training and experience necessary
12 to teach that course or course of study or to provide those services,
13 which others with more seniority do not possess.

14 (2) For purposes of maintaining or achieving compliance with
15 constitutional requirements related to equal protection of the laws
16 as it applies to pupils.

17 (3) On the basis of performance evaluations, if pursuant to a
18 process whereby employees with superior evaluations are retained
19 over those with inferior evaluations. The governing board *of the*
20 *school district* may exercise its discretion in developing the process,
21 which shall be applied uniformly to the entire class that is subject
22 to the reduction in workforce.

23 (4) On the basis that the employee is assigned to a schoolsite
24 that *has implemented the turnaround model or restart model of*
25 *intervention pursuant to Section 53202 and* has been selected by
26 the governing board *of the school district* for exemption from
27 certificated reductions in workforce, based upon the needs of *pupils*
28 *in* the educational program.

29 (e) A school district shall not deviate from terminating a
30 certificated employee in order of seniority if the employee has 18
31 months or less from his or her date of retirement, or is on medical
32 leave.

33 SEC. 2. Section 44955.2 is added to the Education Code, to
34 read:

35 44955.2. A school district that deviates from the order of
36 seniority for purposes of terminating a certificated employee under
37 any provision of this chapter shall do so on the basis of one or
38 more of the items specified in subdivision (d) of Section 44955,
39 and shall not take into consideration whether an employee has
40 exercised any of the rights guaranteed under Chapter 10.7

1 (commencing with Section 3540) of Division 4 of Title 1 of the
2 Government Code.

3 SEC. 3. Section 44956 of the Education Code is amended to
4 read:

5 44956. A permanent employee whose services have been
6 terminated as provided in Section 44955 shall have the following
7 rights:

8 (a) For the period of 39 months from the date of the termination,
9 any employee who in the meantime has not attained the age of 65
10 years shall have the preferred right to reappointment, in the order
11 of original employment as determined by the ~~board~~ *governing*
12 *board of the school district* in accordance with Sections 44831 to
13 44855, inclusive, if the number of employees is increased or the
14 discontinued service is reestablished, with no requirements that
15 were not imposed upon other employees who continued in service;
16 provided, that no probationary or other employee with less seniority
17 shall be employed to render a service that the employee is
18 certificated and competent to render. However, ~~prior to~~ *before*
19 reappointing any employee to teach a subject which he or she has
20 not previously taught, and for which he or she does not have a
21 teaching credential or which is not within the employee's major
22 area of postsecondary study or the equivalent thereof, the governing
23 board *of the school district* shall require the employee to pass a
24 subject matter competency test in the appropriate subject.

25 (b) The right to reappointment set out in subdivision (a) may
26 be waived by the employee, without prejudice, for not more than
27 one school year, unless the ~~board~~ *governing board of the school*
28 *district* extends this right, but the waiver shall not deprive the
29 employee of his or her right to subsequent offers of reappointment.

30 (c) Notwithstanding subdivision (a), a school district may
31 deviate from reappointing a certificated employee in order of
32 seniority for either of the following reasons:

33 (1) The *school* district demonstrates a specific need for personnel
34 to teach a specific course or course of study, or to provide services
35 authorized by a services credential with a specialization in either
36 pupil personnel services or health for a school nurse, and that the
37 employee has special training and experience necessary to teach
38 that course or course of study, or to provide those services, which
39 others with more seniority do not possess.

1 (2) For purposes of maintaining or achieving compliance with
2 constitutional requirements related to equal protection of the laws
3 as that protection applies to pupils.

4 (d) For an employee who is reappointed, the period of his or
5 her absence shall be treated as a leave of absence and shall not be
6 considered as a break in the continuity of his or her service, he or
7 she shall retain the classification and order of employment he or
8 she had when his or her services were terminated, and credit for
9 prior service under any state or *school* district retirement system
10 shall not be affected by the termination, but the period of his or
11 her absence shall not count as a part of the service required for
12 retirement.

13 (e) During the period of an employee's preferred right to
14 reappointment, the employee, in the order of original employment,
15 shall be offered prior opportunity for substitute service during the
16 absence of any other employee who has been granted a leave of
17 absence or who is temporarily absent from duty; provided, that his
18 or her services may be terminated upon the return to duty of the
19 other employee and that the substitute service shall not affect the
20 retention of his or her previous classification and rights. If, in any
21 school year the employee serves as a substitute in any position
22 requiring certification for 21 days or more within a period of 60
23 schooldays, the compensation the employee receives for substitute
24 service in that 60-day period, including his or her first 20 days of
25 substitute service, shall not be less than the amount the employee
26 would receive if he or she were being reappointed.

27 (f) Notwithstanding subdivision (e), a school district may deviate
28 from the order of seniority in offering the opportunity for substitute
29 service for either of the following reasons:

30 (1) The *school* district demonstrates a specific need for personnel
31 to teach a specific course or course of study, or to provide services
32 authorized by a services credential with a specialization in either
33 pupil personnel services or health for a school nurse, and the
34 employee has special training and experience, and has demonstrated
35 the competency necessary to teach in a specified grade level or
36 course of study, or to provide those services, that others with more
37 seniority do not possess or are not able to provide.

38 (2) For purposes of maintaining or achieving compliance with
39 constitutional requirements related to equal protection of the laws
40 as that protection applies to pupils.

1 (g) (1) During the period of the employee's preferred right to
2 reappointment, the governing board of the *school* district, if it is
3 also the governing board of one or more other *school* districts,
4 may assign the employee to services that he or she is certificated
5 and competent to render, in one of the other *school* districts. The
6 compensation the employee receives, in the discretion of the
7 governing board of the *school district*, may be the same as the
8 employee would have received had he or she been serving in the
9 *school* district from which the employee's services were
10 terminated. The employee's service in the other *school* district or
11 districts shall be counted toward the period required for both state
12 and local retirement as though rendered in the *school* district from
13 which the employee's services were terminated. The employee
14 shall not displace any other permanent employee in the other *school*
15 district or districts.

16 (2) It is the intent of this subdivision that the employees of a
17 school district, the governing board of which is also the governing
18 board of one or more other school districts, shall not be at a
19 disadvantage as compared with employees of a unified school
20 district.

21 (h) At any time ~~prior to~~ before the completion of one year after
22 the employee's return to service, the employee may continue or
23 make up, with interest, his or her own contributions to any state
24 or *school* district retirement system for the period of his or her
25 absence, but it shall not be obligatory on the state or *school* district
26 to match the contributions.

27 (i) If the employee becomes disabled or reaches retirement age
28 at any time before his or her return to service, the employee shall
29 receive, in any state or *school* district retirement system of which
30 the employee was a member, all benefits to which he or she would
31 have been entitled if the disability or retirement occurred at the
32 time of his or her termination of service, plus any benefits the
33 employee may have qualified for thereafter, as though still
34 employed.