

ASSEMBLY BILL

No. 1221

Introduced by Assembly Member Wilk

February 22, 2013

An act to amend Sections 44936, 44938, 44944, and 44945 of, and to add Sections 44932.5 and 44940.7 to, the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 1221, as introduced, Wilk. School employees: discipline: suspension and dismissal.

(1) Existing law prohibits a permanent school employee from being dismissed except for one or more specified offenses.

This bill would prohibit a collective bargaining agreement entered into or renewed on or after January 1, 2014, from requiring the removal, after a specified time period, from an employee's record of records pertaining to discipline, complaints, reprimands, or investigations relating to the employee's commission, or potential commission, of one of those specified offenses.

(2) Existing law authorizes a governing board of a school district to give notice to a permanent employee of its intention to dismiss or suspend him or her for specified causes at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing. Existing law prohibits that notice from being given between May 15th and September 15th in any year.

This bill would remove that prohibition.

(3) Existing law prohibits the governing board of a school district from acting upon any charges of unprofessional conduct, or unsatisfactory performance, unless at least 45, or 90, calendar days,

respectively, prior to the date of the filing of the charges the governing board, or its authorized representative, has given the employee written notice, as specified.

This bill would remove those 45-day and 90-day requirements.

(4) Existing law requires the governing board of a school district to immediately place an employee on compulsory leave of absence if the employee is charged with a mandatory leave of absence offense, as defined.

This bill would require the governing board to transfer a certificated employee to nonclassroom duties that do not involve contact with pupils if the governing board has reasonable cause to believe that the employee is under investigation by a law enforcement agency for commission of a mandatory leave of absence offense. The bill would require an employee transferred under these provisions to continue to receive his or her regular salary during the period of the transfer. If the governing board returns the employee to classroom duties, the bill would require the governing board to record the reason or reasons for the return in a resolution adopted by the governing board. By placing additional duties on school district governing boards regarding the transfer of employee duties, this bill would impose a state-mandated local program.

(5) Existing law establishes a Commission on Professional Competence for each dismissal or suspension hearing requested by an employee, consisting of specified members. Existing law deems the decision of the Commission on Professional Competence to be the final decision of the governing board of the school district.

This bill would make various changes to the provisions relating to the hearing, including requiring the Commission on Professional Competence to consist solely of an administrative law judge, as well as providing that the decision of the commission would be advisory, and the final decision regarding the discipline of the employee would be determined by action of the governing board of the school district. The bill would provide that an employee requesting a hearing may be placed on administrative leave without pay, and that an employee who is placed on administrative leave would be required to be paid his or her regular salary if he or she furnishes to the school district acceptable security, as specified.

(6) Existing law prohibits testimony from being given or evidence being introduced at the hearing relating to matters that occurred more than 4 years prior to the date of the filing of the notice of dismissal or suspension.

This bill would remove that 4-year limitation.

(7) This bill would make nonsubstantive and conforming changes.

(8) 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. Section 44932.5 is added to the Education Code,
2 to read:

3 44932.5. A collective bargaining agreement entered into or
4 renewed on or after January 1, 2014, shall not require the removal,
5 after a specified time period, from an employee’s record of records
6 pertaining to discipline, complaints, reprimands, or investigations
7 relating to the employee’s commission, or potential commission,
8 of an offense listed in Section 44932.

9 SEC. 2. Section 44936 of the Education Code is amended to
10 read:

11 44936. The notice of dismissal or suspension in a proceeding
12 initiated pursuant to Section 44934 shall ~~not be given between~~
13 ~~May 15th and September 15th in any year. It shall~~ be in writing
14 and be served upon the employee personally or by United States
15 registered mail addressed to ~~him~~ *the employee* at ~~his~~ *the employee’s*
16 last known address. A copy of the charges filed, containing the
17 information required by Section 11503 of the Government Code,
18 together with a copy of the provisions of this article, shall be
19 attached to the notice.

20 SEC. 3. Section 44938 of the Education Code is amended to
21 read:

22 44938. (a) The governing board of any school district shall
23 not act upon any charges of unprofessional conduct unless ~~at least~~
24 ~~45 calendar days prior to the date of the filing,~~ *the governing* board
25 or its authorized representative has given the employee against
26 whom the charge is filed; written notice of the unprofessional

1 conduct, specifying the nature ~~thereof of the unprofessional conduct~~
 2 with ~~such~~ specific instances of behavior and with ~~such~~ particularity
 3 as to furnish the employee an opportunity to correct his or her
 4 faults and overcome the grounds for the charge. The written notice
 5 shall include the evaluation made pursuant to Article 11
 6 (commencing with Section 44660) of Chapter 3, if applicable to
 7 the employee.

8 (b) The governing board of any school district shall not act upon
 9 any charges of unsatisfactory performance unless it acts in
 10 accordance with the provisions of paragraph (1) or (2):

11 (1) ~~At least 90 calendar days prior to the date of the filing, the~~
 12 ~~The governing~~ board or its authorized representative has given the
 13 employee against whom the charge is filed, written notice of the
 14 unsatisfactory performance, specifying the nature ~~thereof of the~~
 15 ~~unsatisfactory performance~~ with ~~such~~ specific instances of behavior
 16 and with ~~such~~ particularity as to furnish the employee an
 17 opportunity to correct his or her faults and overcome the grounds
 18 for the charge. The written notice shall include the evaluation made
 19 pursuant to Article 11 (commencing with Section 44660) of
 20 Chapter 3, if applicable to the employee.

21 (2) The governing board may act during the time period
 22 composed of the last one-fourth of the schooldays it has scheduled
 23 for purposes of computing apportionments in any fiscal year if,
 24 ~~prior to~~ before the beginning of that time period, the *governing*
 25 board or its authorized representative has given the employee
 26 against whom the charge is filed; written notice of the
 27 unsatisfactory performance, specifying the nature ~~thereof of the~~
 28 ~~unsatisfactory performance~~ with ~~such~~ specific instances of behavior
 29 and with ~~such~~ particularity as to furnish the employee an
 30 opportunity to correct his or her faults and overcome the grounds
 31 for the charge. The written notice shall include the evaluation made
 32 pursuant to Article 11 (commencing with Section 44660) of
 33 Chapter 3, if applicable to the employee.

34 (e) ~~“Unsatisfactory performance” as used in this section means,~~
 35 ~~and refers only to, the unsatisfactory performance particularly~~
 36 ~~specified as a cause for dismissal in Section 44932 and does not~~
 37 ~~include any other cause for dismissal specified in Section 44932.~~

38 ~~“Unprofessional~~

39 (c) (1) *“Unprofessional conduct”* as used in this section means,
 40 and refers to, the unprofessional conduct particularly specified as

1 a cause for dismissal or suspension in Sections 44932 and 44933
2 and does not include any other cause for dismissal specified in
3 Section 44932.

4 (2) *“Unsatisfactory performance” as used in this section means,*
5 *and refers only to, the unsatisfactory performance particularly*
6 *specified as a cause for dismissal in Section 44932 and does not*
7 *include any other cause for dismissal specified in Section 44932.*

8 SEC. 4. Section 44940.7 is added to the Education Code, to
9 read:

10 44940.7. (a) The governing board shall transfer a certificated
11 employee to nonclassroom duties that do not involve contact with
12 pupils if the governing board has reasonable cause to believe that
13 the employee is under investigation by a law enforcement agency
14 for commission of a mandatory leave of absence offense within
15 the meaning of subdivision (a) of Section 44940.

16 (b) An employee transferred pursuant to this section shall
17 continue to receive his or her regular salary during the period of
18 the transfer.

19 (c) If the governing board returns the certificated employee to
20 classroom duties that involve contact with pupils, the governing
21 board shall record the reason or reasons for the return in a
22 resolution adopted by the governing board.

23 SEC. 5. Section 44944 of the Education Code is amended to
24 read:

25 44944. (a) (1) In a dismissal or suspension proceeding initiated
26 pursuant to Section 44934, if a hearing is requested by the
27 employee, the hearing shall be commenced within 60 days from
28 the date of the employee’s demand for a hearing. The hearing shall
29 be initiated, conducted, and a decision made in accordance with
30 Chapter 5 (commencing with Section 11500) of Part 1 of Division
31 3 of Title 2 of the Government Code. However, the hearing date
32 shall be established after consultation with the employee and the
33 governing board, or their representatives, and the Commission on
34 Professional Competence shall have all of the power granted to
35 an agency in that chapter, except that the right of discovery of the
36 parties shall not be limited to those matters set forth in Section
37 11507.6 of the Government Code but shall include the rights and
38 duties of any party in a civil action brought in a superior court
39 under Title 4 (commencing with Section 2016.010) of Part 4 of
40 the Code of Civil Procedure. Notwithstanding any provision to the

1 contrary, and except for the taking of oral depositions, no discovery
2 shall occur later than 30 calendar days after the employee is served
3 with a copy of the accusation pursuant to Section 11505 of the
4 Government Code. In all cases, discovery shall be completed prior
5 to seven calendar days before the date upon which the hearing
6 commences. If any continuance is granted pursuant to Section
7 11524 of the Government Code, the time limitation for
8 commencement of the hearing as provided in this subdivision shall
9 be extended for a period of time equal to the continuance. However,
10 the extension shall not include that period of time attributable to
11 an unlawful refusal by either party to allow the discovery provided
12 for in this section.

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

20 (3) The time periods in this section and of Chapter 5
21 (commencing with Section 11500) of Part 1 of Division 3 of Title
22 2 of the Government Code and of Title 4 (commencing with
23 Section 2016.010) of Part 4 of the Code of Civil Procedure shall
24 not be applied so as to deny discovery in a hearing conducted
25 pursuant to this section.

26 (4) The superior court of the county in which the hearing will
27 be held may, upon motion of the party seeking discovery, suspend
28 the hearing so as to comply with the requirement of ~~the preceding~~
29 ~~paragraph~~ *paragraph (3)*.

30 (5) ~~No~~ A witness shall *not* be permitted to testify at the hearing
31 except upon oath or affirmation. ~~No testimony shall be given or~~
32 ~~evidence introduced relating to matters that occurred more than~~
33 ~~four years prior to the date of the filing of the notice. Evidence of~~
34 ~~records regularly kept by the governing board concerning the~~
35 ~~employee may be introduced, but no decision relating to the~~
36 ~~dismissal or suspension of any employee shall be made based on~~
37 ~~charges or evidence of any nature relating to matters occurring~~
38 ~~more than four years prior to the filing of the notice.~~

39 (b) ~~(4)~~ The hearing provided for in this section shall be
40 conducted by a Commission on Professional Competence. ~~One~~

1 member of the commission shall be selected by the employee, one
2 member shall be selected by the governing board, and one member
3 shall be *which shall consist solely of* an administrative law judge
4 of the Office of Administrative Hearings who shall be chairperson
5 and a voting member of the commission and shall be responsible
6 for ~~assuring~~ *responsible for ensuring* that the legal rights of the
7 parties are protected at the hearing. If either the governing board
8 or the employee for any reason fails to select a commission member
9 at least seven calendar days prior to the date of the hearing, the
10 failure shall constitute a waiver of the right to selection, and the
11 county board of education or its specific designee shall immediately
12 make the selection. If the county board of education is also the
13 governing board of the school district or has by statute been granted
14 the powers of a governing board, the selection shall be made by
15 the Superintendent, who shall be reimbursed by the school district
16 for all costs incident to the selection.

17 (2) ~~The member selected by the governing board and the~~
18 ~~member selected by the employee shall not be related to the~~
19 ~~employee and shall not be employees of the district initiating the~~
20 ~~dismissal or suspension and shall hold a currently valid credential~~
21 ~~and have at least five years' experience within the past 10 years~~
22 ~~in the discipline of the employee.~~

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

28 (A) That the employee should be dismissed.

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

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

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

37 (3) The commission shall not have the power to dispose of the
38 charge of dismissal by imposing probation or other alternative
39 sanctions. The imposition of suspension pursuant to subparagraph
40 (B) of paragraph (1) shall be available only in a suspension

1 proceeding authorized pursuant to subdivision (b) of Section 44932
 2 or Section 44933.

3 (4) ~~The decision of the Commission on Professional Competence~~
 4 ~~shall be deemed to be the final decision of the governing board~~
 5 *commission shall be advisory, and the final decision regarding*
 6 *the discipline of the employee shall be determined by actions of*
 7 *the governing board of the school district.*

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

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

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

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

26 (e)

27 ~~(d) (1) If the Commission on Professional Competence~~
 28 ~~governing board determines that the employee should be dismissed~~
 29 ~~or suspended, the governing board and the employee shall share~~
 30 ~~equally the expenses of the hearing, including the cost of the~~
 31 ~~administrative law judge. The state shall pay any costs incurred~~
 32 ~~under paragraph (2) of subdivision (d), the reasonable expenses,~~
 33 ~~as determined by the administrative law judge, of the member~~
 34 ~~selected by the governing board and the member selected by the~~
 35 ~~employee, including, but not limited to, payments or obligations~~
 36 ~~incurred for travel, meals, and lodging, and the cost of the substitute~~
 37 ~~or substitutes, if any, for the member selected by the governing~~
 38 ~~board and the member selected by the employee. The Controller~~
 39 ~~shall pay all claims submitted pursuant to this paragraph from the~~
 40 ~~General Fund, and may prescribe reasonable rules, regulations,~~

1 and forms for the submission of the claims. The employee and the
2 governing board shall pay their own attorney’s fees.

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

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

17 (4)

18 (3) ~~If either the governing board or the employee petitions a~~
19 ~~court of competent jurisdiction for review of the decision of the~~
20 ~~commission governing board, the payment of expenses to members~~
21 ~~of the commission the administrative law judge required by this~~
22 ~~subdivision shall not be stayed.~~

23 (5)

24 (4) ~~(A) If the decision of the commission governing board is~~
25 ~~finally reversed or vacated by a court of competent jurisdiction,~~
26 ~~either the state, having paid the commission members’ expenses,~~
27 ~~shall be entitled to reimbursement from the governing board for~~
28 ~~those expenses, or the governing board, having paid the expenses,~~
29 ~~shall be entitled to reimbursement from the state.~~

30 ~~(B) Additionally, either the employee, having paid a portion of~~
31 ~~the expenses of the hearing, including the cost of the administrative~~
32 ~~law judge, shall be entitled to reimbursement from the governing~~
33 ~~board for the expenses, or the governing board, having paid its~~
34 ~~portion and the employee’s portion of the expenses of the hearing,~~
35 ~~including the cost of the administrative law judge, shall be entitled~~
36 ~~to reimbursement from the employee for that portion of the~~
37 ~~expenses.~~

38 (f)

39 (e) The hearing provided for in this section shall be conducted
40 in a place selected by ~~agreement among the members of the~~

1 ~~commission~~ agreement. In the absence of agreement, the place
2 shall be selected by the administrative law judge.

3 (f) (1) *For the duration of the hearing conducted pursuant to*
4 *this section, the employee may be placed on administrative leave*
5 *without pay.*

6 (2) *If an employee is placed on administrative leave pursuant*
7 *to this section, the employee shall continue to be paid his or her*
8 *regular salary during the period of his or her administrative leave*
9 *of absence if during that time he or she furnishes to the school*
10 *district a suitable bond or other security acceptable to the*
11 *governing board, as a guarantee that the school district will be*
12 *repaid the amount of salary during the employee's leave of absence*
13 *if, by action of the governing board, a final decision is made to*
14 *terminate the employee, or the employee fails or refuses to return*
15 *to service following a decision not to terminate the employee. If*
16 *the governing board determines that the employee should not be*
17 *dismissed, the governing board shall reimburse the employee for*
18 *the cost of the bond upon his or her return to service in the school*
19 *district.*

20 (3) *If the employee prevails at the hearing, the administrative*
21 *law judge may recommend a suitable compensatory remedy,*
22 *including back wages and benefits, which the governing board*
23 *may adopt if the employee is reinstated. An employee who is*
24 *reinstated pursuant to this section, either by the governing board*
25 *or by order of a court of competent jurisdiction, is entitled to*
26 *reasonable back wages and benefits.*

27 SEC. 6. Section 44945 of the Education Code is amended to
28 read:

29 44945. The decision of the ~~Commission on Professional~~
30 ~~Competence governing board~~ may, on petition of ~~either the~~
31 ~~governing board or~~ the employee, be reviewed by a court of
32 competent jurisdiction in the same manner as a decision made by
33 a hearing officer under Chapter 5 (commencing with Section
34 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
35 The court, on review, shall exercise its independent judgment on
36 the evidence. The proceeding shall be set for hearing at the earliest
37 possible date and shall take precedence over all other cases, except
38 older matters of the same character and matters to which special
39 precedence is given by law.

1 SEC. 7. If the Commission on State Mandates determines that
2 this act contains costs mandated by the state, reimbursement to
3 local agencies and school districts for those costs shall be made
4 pursuant to Part 7 (commencing with Section 17500) of Division
5 4 of Title 2 of the Government Code.

O