

AMENDED IN ASSEMBLY APRIL 24, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1221

Introduced by Assembly Member Wilk
*(Coauthors: Assembly Members Conway, Beth Gaines, Gorell, Harkey,
Jones, Morrell, and Nestande)*

February 22, 2013

An act to amend Sections 44936, 44938, ~~44939~~, 44944, and 44945 of, ~~and to add Sections~~ *Section 44932.5 and 44940.7* to, *and to repeal Section 45047 of*, the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 1221, as amended, 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)~~

~~(4) Existing law establishes a Commission on Professional Competence for each dismissal or suspension hearing requested by an employee, consisting of specified members, and requires the proceeding to be conducted in accordance with the Administrative Procedure Act. 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 delete the provisions providing for the establishment of a Commission on Professional Competence to consist solely of, and would instead require the proceedings to be conducted pursuant to the Administrative Procedure Act by an administrative law judge, as well as providing. The bill would provide that the decision of the commission administrative law judge 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)~~

(5) 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)~~

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

~~(8)~~

(7) 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 be in writing and be served
13 upon the employee personally or by United States registered mail
14 addressed to the employee at the employee’s last known address.

1 A copy of the charges filed, containing the information required
2 by Section 11503 of the Government Code, together with a copy
3 of the provisions of this article, shall be attached to the notice.

4 SEC. 3. Section 44938 of the Education Code is amended to
5 read:

6 44938. (a) The governing board of any school district shall
7 not act upon any charges of unprofessional conduct unless the
8 governing board or its authorized representative has given the
9 employee against whom the charge is filed written notice of the
10 unprofessional conduct, specifying the nature of the unprofessional
11 conduct with specific instances of behavior and with particularity
12 as to furnish the employee an opportunity to correct his or her
13 faults and overcome the grounds for the charge. The written notice
14 shall include the evaluation made pursuant to Article 11
15 (commencing with Section 44660) of Chapter 3, if applicable to
16 the employee.

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

20 (1) The governing board or its authorized representative has
21 given the employee against whom the charge is filed, written notice
22 of the unsatisfactory performance, specifying the nature of the
23 unsatisfactory performance with specific instances of behavior
24 and with particularity as to furnish the employee an opportunity
25 to correct his or her faults and overcome the grounds for the charge.
26 The written notice shall include the evaluation made pursuant to
27 Article 11 (commencing with Section 44660) of Chapter 3, if
28 applicable to the employee.

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

1 (c) (1) “Unprofessional conduct” as used in this section means,
2 and refers to, the unprofessional conduct particularly specified as
3 a cause for dismissal or suspension in Sections 44932 and 44933
4 and does not include any other cause for dismissal specified in
5 Section 44932.

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

10 ~~SEC. 4. Section 44940.7 is added to the Education Code, to~~
11 ~~read:~~

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

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

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

25 ~~SEC. 4. Section 44939 of the Education Code is amended to~~
26 ~~read:~~

27 ~~44939. (a) Upon the filing of written charges, duly signed~~
28 ~~and verified by the person filing them with the governing board~~
29 ~~of a school district, or upon a written statement of charges~~
30 ~~formulated by the governing board, charging a permanent employee~~
31 ~~of the district with immoral conduct, conviction of a felony or of~~
32 ~~any crime involving moral turpitude, with incompetency due to~~
33 ~~mental disability, with willful refusal to perform regular~~
34 ~~assignments without reasonable cause, as prescribed by reasonable~~
35 ~~rules and regulations of the employing school district, with~~
36 ~~violation of Section 51530, with knowing membership by the~~
37 ~~employee in the Communist Party or with violation of any~~
38 ~~provision in Sections 7001 to 7007, inclusive, the governing board~~
39 ~~may, if it deems such action necessary, immediately suspend the~~
40 ~~employee from his or her duties and give notice to him the~~

1 *employee* of his *or her* suspension, and that 30 days after service
 2 of the notice, he *or she* will be dismissed, unless he *or she* demands
 3 a hearing.

4 ¶

5 (b) *If* the permanent employee is suspended upon charges of
 6 knowing membership by the employee in the Communist Party or
 7 for any violation of Section 7001, 7002, 7003, 7006, 7007, or
 8 51530, he *or she* may within 10 days after service ~~upon him~~ of
 9 notice of ~~such~~ suspension, file with the governing board a verified
 10 denial, in writing, of the charges. ~~In such event the A~~ permanent
 11 employee who demands a hearing within the 30-day period shall
 12 continue to be paid his *or her* regular salary during the period of
 13 suspension and until the ~~entry of the final~~ decision of the
 14 ~~Commission on Professional Competence, governing board of the~~
 15 ~~school district~~, if and during such time as ~~he the~~ *employee* furnishes
 16 to the school district a suitable bond, or other security acceptable
 17 to the governing board, as a guarantee that the employee will repay
 18 to the school district the amount of salary ~~so paid to him~~ during
 19 the period of suspension in case the decision of the ~~Commission~~
 20 ~~on Professional Competence governing board~~ is that ~~he the~~
 21 *employee* shall be dismissed. If it is determined that the employee
 22 may not be dismissed, the school board shall reimburse the
 23 employee for the cost of the bond.

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

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

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

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

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

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

30 (5) A witness shall not be permitted to testify at the hearing
31 except upon oath or affirmation.

32 (b) The hearing provided for in this section shall be conducted
33 by a ~~Commission on Professional Competence which shall consist~~
34 ~~solely~~ of an administrative law judge of the Office of
35 Administrative Hearings who shall be responsible for ensuring
36 that the legal rights of the parties are protected at the hearing.

37 (c) (1) ~~The commission~~ *administrative law judge* shall prepare
38 a written decision containing findings of fact, determinations of
39 issues, and a disposition that shall be, solely, one of the following:

40 (A) That the employee should be dismissed.

- 1 (B) That the employee should be suspended for a specific period
2 of time without pay.
- 3 (C) That the employee should not be dismissed or suspended.
- 4 (2) The decision of the ~~commission~~ *administrative law judge*
5 that the employee should not be dismissed or suspended shall not
6 be based on nonsubstantive procedural errors committed by the
7 school district or governing board unless the errors are prejudicial
8 errors.
- 9 (3) The ~~commission~~ *administrative law judge* shall not have the
10 power to dispose of the charge of dismissal by imposing probation
11 or other alternative sanctions. The imposition of suspension
12 pursuant to subparagraph (B) of paragraph (1) shall be available
13 only in a suspension proceeding authorized pursuant to subdivision
14 (b) of Section 44932 or Section 44933.
- 15 (4) The decision of the ~~commission~~ *administrative law judge*
16 shall be advisory, and the final decision regarding the discipline
17 of the employee shall be determined by actions of the governing
18 board of the school district.
- 19 (5) The governing board may adopt from time to time rules and
20 procedures not inconsistent with this section as may be necessary
21 to effectuate this section.
- 22 (6) The governing board and the employee shall have the right
23 to be represented by counsel.
- 24 (d) (1) If the governing board determines that the employee
25 should be dismissed or suspended, the governing board and the
26 employee shall share equally the expenses of the hearing, including
27 the cost of the administrative law judge. The Controller shall pay
28 all claims submitted pursuant to this paragraph from the General
29 Fund, and may prescribe reasonable rules, regulations, and forms
30 for the submission of the claims. The employee and the governing
31 board shall pay their own attorney's fees.
- 32 (2) If the governing board determines that the employee should
33 not be dismissed or suspended, the governing board shall pay the
34 expenses of the hearing, including the cost of the administrative
35 law judge.
- 36 (3) If the employee petitions a court of competent jurisdiction
37 for review of the decision of the governing board, the payment of
38 expenses to the administrative law judge required by this
39 subdivision shall not be stayed.

1 (4) If the decision of the governing board is finally reversed or
2 vacated by a court of competent jurisdiction, the employee, having
3 paid a portion of the expenses of the hearing, including the cost
4 of the administrative law judge, shall be entitled to reimbursement
5 from the governing board for the expenses.

6 (e) The hearing provided for in this section shall be conducted
7 in a place selected by agreement. In the absence of agreement, the
8 place shall be selected by the administrative law judge.

9 (f) (1) For the duration of the hearing conducted pursuant to
10 this section, the employee may be placed on administrative leave
11 without pay.

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

26 (3) If the employee prevails at the hearing, the administrative
27 law judge may recommend a suitable compensatory remedy,
28 including back wages and benefits, which the governing board
29 may adopt if the employee is reinstated. An employee who is
30 reinstated pursuant to this section, either by the governing board
31 or by order of a court of competent jurisdiction, is entitled to
32 reasonable back wages and benefits.

33 SEC. 6. Section 44945 of the Education Code is amended to
34 read:

35 44945. The decision of the governing board may, on petition
36 of the employee, be reviewed by a court of competent jurisdiction
37 in the same manner as a decision made by a hearing officer under
38 Chapter 5 (commencing with Section 11500) of Part 1 of Division
39 3 of Title 2 of the Government Code. The court, on review, shall
40 exercise its independent judgment on the evidence. The proceeding

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

4 *SEC. 7. Section 45047 of the Education Code is repealed.*

5 ~~45047. Service on a commission on professional competence
6 pursuant to Section 44944, in the employing school district or in
7 some other district, by a person employed by a district in a position
8 requiring certification qualifications shall not be considered time
9 off job with respect to Section 45041. Neither the amount paid to
10 a substitute required to be hired to replace such a person serving
11 on a commission on professional competence pursuant to Section
12 44945 in the employing school district or in some other district
13 nor the amount which would have been paid to a substitute had a
14 substitute been employed, shall be deducted from the person's
15 salary pursuant to Section 45042.~~

16 ~~SEC. 7.~~

17 *SEC. 8.* If the Commission on State Mandates determines that
18 this act contains costs mandated by the state, reimbursement to
19 local agencies and school districts for those costs shall be made
20 pursuant to Part 7 (commencing with Section 17500) of Division
21 4 of Title 2 of the Government Code.