

ASSEMBLY BILL

No. 2084

Introduced by Assembly Member Jones

February 20, 2014

An act to add Article 3.5 (commencing with Section 44990) to Chapter 4 of Part 25 of Division 3 of Title 2 of the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 2084, as introduced, Jones. School employees: discipline: suspension and dismissal.

(1) Existing law prohibits a permanent school employee from being dismissed except for one or more specified reasons. Existing law establishes a Commission on Professional Competence for each dismissal or suspension hearing requested by an employee, consisting of specified members, and 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, notwithstanding those provisions, define, among other things, the egregious conduct of school employees, and would revise numerous procedures for hearings of employees dismissed or suspended for a charge of egregious misconduct. The bill would, among other things, provide that such hearings shall be conducted solely by an administrative law judge, whose decision would be final. The bill would provide that the Office of Administrative Hearings shall give priority to any proceeding involving egregious misconduct. The bill would provide, if the final decision of the administrative law judge or charter school governing board is appealed to a court of competent

jurisdiction, that the prevailing party on the appeal shall be entitled to an award of reasonable attorney fees and costs for the appeal.

(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 15 and September 15 in any year.

This bill would, notwithstanding that prohibition authorize the governing board of a school district to give notice of a dismissal or suspension in a proceeding initiated pursuant to charges of egregious misconduct at any time during the calendar year.

(3) 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, notwithstanding that prohibition, provide, among other things, that there shall be no limitation in producing evidence reasonably relating to acts of egregious misconduct by a school employee, and that evidence of egregious misconduct shall not be excluded based on the passage of time.

(4) Existing law provides that information of a derogatory nature shall not be entered into an employee's personnel records unless the employee is given an opportunity to review and comment on that information.

This bill would, notwithstanding that provision, prohibit an agreement that is amended, renewed, or entered into by a school district or charter school, or agent thereof, from authorizing or requiring the removal from school employees' records any evidence of credible complaints, reprimands, punishments, substantiated investigations, or discipline relating to a school employee's commission, or alleged commission, of an act of egregious misconduct, as specified.

(5) Existing law provides that a school employee shall continue to be paid his or her regular salary during the period of his or her compulsory leave of absence if and during that time he or she furnishes to the school district a suitable bond, or other security acceptable to the governing board, as provided.

This bill would, beginning 30 days after the school district or its authorized representative has served the school employee with written notice of the intent to dismiss for egregious misconduct through the

date of the final decision to terminate the employee for egregious misconduct, authorize a school district to recover the equivalent of all payments paid to and on behalf of the school employee. The bill would prohibit such time and compensation from being used for purposes of any public retirement system. The bill would also make various findings and declarations.

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

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

1 SECTION 1. This act shall be known and may be cited as the
2 Stop Child Molesters, Sexual Abusers and Drug Dealers from
3 Working in California Schools Act.

4
5 Stop Child Molesters, Sexual Abusers and Drug Dealers from
6 Working in California Schools Act
7

8 SEC. 2. The Legislature finds and declares all of the following:

9 (a) California statutes do not enable school districts to
10 expeditiously and permanently protect innocent students and staff
11 from school employees who perpetrate acts of child molestation,
12 sexual abuse, drug dealing, and other egregious misconduct.

13 (b) Any number of press reports of egregious misconduct against
14 children and staff in California schools carried out by school
15 employees is abhorrent and indicative that California schools are
16 not safe from such perpetrators:

17 (1) In Los Angeles a third grade school employee abusing
18 dozens of students ages 6 to 10, inclusive, including spoon-feeding
19 semen and semen-laced cookies to blindfolded children, over a
20 period of at least five school years.

21 (2) In San Clemente a middle school employee committing lewd
22 acts, repeated sexual assault and oral copulation with students
23 under the age of 14.

24 (3) In the Bay Area a third grade school employee sexually
25 penetrating a child, performing lewd acts on a child and molesting
26 students over a period of at least three school years; and, another
27 school employee engaging in unlawful sexual intercourse with a
28 minor under the age of 16, oral copulation of a person under 16
29 and performing lewd acts on a child.

- 1 (4) In the Silicon Valley a school employee selling crystal
2 methamphetamine and date-rape drug GHB to undercover police.
- 3 (5) In Sacramento a school employee alleged to have sexually
4 molested students not being dismissed but transferred to another
5 school and the next school year committing child molestation and
6 sexual battery on students.
- 7 (6) In the Central Valley a school employee disciplined for one
8 week by one school district returning to work as a school substitute
9 in another district and committing child molestation and lewd and
10 lascivious acts with elementary students.
- 11 (7) In Simi Valley a school employee committing lewd acts and
12 oral copulation with a student under the age of 14.
- 13 (8) In the Inland Empire prosecution of a school employee
14 committing countless sexual offenses and abuse against a student
15 brought to light two more victims of sexual offenses by the same
16 school employee; and, a middle school employee packaging crystal
17 methamphetamine for sale.
- 18 (9) In the High Desert a school employee committing child
19 molestation, oral copulation and unlawful intercourse with a minor
20 in the classroom.
- 21 (10) In San Diego a middle school employee of the year
22 receiving and possessing child pornography, including explicit
23 images of a 10-year-old girl, and possessing a computer and disks
24 containing images of minors - many of them prepubescent -
25 engaged in sexually explicit conduct.
- 26 (c) Most school districts do everything within their power to
27 protect innocent students and staff from school employees who
28 perpetrate acts of child molestation, sexual abuse, drug dealing
29 and other egregious misconduct despite inadequate state laws.
- 30 (d) Current law includes loopholes for school employees
31 perpetrating egregious misconduct to remain on the public payroll
32 and earn continuing retirement credit for excessive time after
33 having been charged in writing with committing egregious
34 misconduct and being notified of a decision to terminate
35 employment thereby increasing the dismissal costs to school
36 districts and draining resources from schools and the children they
37 serve.
- 38 (e) School employees perpetrating egregious misconduct in
39 California have exploited loopholes to delay and conceal dismissal
40 proceedings manipulating school districts to pay-off, reassign,

1 enter into agreements to expunge evidence of egregious misconduct
2 from district personnel files, and approve secret settlement
3 agreements enabling the school employee to continue to perpetrate
4 offenses in other schools and school districts, thereby infringing
5 on the inalienable right of students and staff to attend public
6 primary, elementary, junior high, and senior high school campuses
7 which are safe, secure and peaceful as guaranteed by the
8 Constitution of the State of California.

9 (f) Accordingly, the Legislatures declares that to secure the
10 constitutional guarantee of students and staff to be safe and secure
11 in their persons at public primary, elementary, junior high and
12 senior high school campuses, school districts must have the
13 appropriate statutory authority to expeditiously remove and
14 permanently dismiss perpetrators of egregious misconduct without
15 facing lengthy and costly litigation or creating incentives to transfer
16 the school employee to another assignment, school or school
17 district.

18 SEC. 3. Article 3.5 (commencing with Section 44990) is added
19 to Chapter 4 of Part 25 of Division 3 of Title 2 of the Education
20 Code, to read:

21

22 Article 3.5. Stop Child Molesters, Sexual Abusers and Drug
23 Dealers from Working in California Schools Act
24

25 44990. As used in this part, the following terms have the
26 following meanings:

27 (a) "Egregious misconduct" means conduct for which a school
28 employee is subject to discipline or dismissal and that conduct is
29 also reasonably related to any offense as described in Sections
30 44010 and 44011 of this code, and Sections 11165.2 to 11165.6,
31 inclusive of the Penal Code, including but not limited to child
32 molestation, sexual abuse of minors, sexual assault on minors or
33 adults, and unlawful distribution of illicit or specified controlled
34 substances.

35 (b) "School district" includes school district governing boards,
36 county superintendent of schools and county boards of education.

37 (c) "School employee" includes but is not limited to any
38 certificated or classified person whether or not providing services
39 through an agreement with a school district, or charter school as
40 specified in this part, and without regard to whether the person is

1 permanent, probationary, temporary, substitute, full-time or
2 part-time or whether the person is an employee or independent
3 contractor.

4 44991. (a) Notwithstanding any other provision of law, a notice
5 of dismissal or suspension in a proceeding initiated pursuant to
6 charges of egregious misconduct of a school employee may be
7 served at any time during the calendar year.

8 (b) Notwithstanding any other provision of law with respect to
9 any required hearing on the suspension or dismissal of a school
10 employee pursuant to charges of egregious misconduct:

11 (1) There shall be no limitation in producing evidence, including
12 but not limited to declarations, testimony or depositions from
13 victims or witnesses, reasonably relating to acts of egregious
14 misconduct by a school employee.

15 (2) Evidence of egregious misconduct shall not be excluded
16 based on the passage of time.

17 (3) There shall be no limitation on the amendment of written
18 charges for suspension or dismissal of a school employee when
19 the substance of the amendment is an allegation of egregious
20 misconduct. To the extent that written charges are amended, the
21 school employee shall be given a reasonable opportunity to respond
22 to the amended charges.

23 (c) Notwithstanding any other provision of law, on or after the
24 effective date of this part:

25 (1) No agreement that is amended, renewed, or entered into by
26 a school district or charter school, or agent thereof, shall authorize
27 or require the removal from school employees' records any
28 evidence of credible complaints, reprimands, punishments,
29 substantiated investigations, or discipline relating to a school
30 employees' commission, or alleged commission, of an act of
31 egregious misconduct, including but not limited to child
32 molestation, sexual assault or abuse of a minor or adult, or the
33 distribution of illicit drugs and other unlawful distribution of
34 specified controlled substances. This prohibition does not preclude
35 a provision in any agreement for the removal of documents
36 containing unfounded, erroneous or false allegations from a school
37 employees' permanent personnel file upon a finding by the
38 governing board by majority vote that the information was
39 unfounded, erroneous or false, upon the order of an administrative

1 law judge in a final decision of an adverse action or order of a
2 court of competent jurisdiction as otherwise provided by law.

3 (2) No school district or charter school, or agent thereof, shall
4 enter into an agreement that would prevent a report of any change
5 in the employment status of a school employee alleged to have
6 engaged in egregious misconduct, including but not limited to
7 reporting to any local, state or federal law enforcement agency, or
8 reports as mandated by Section 44030.5. Change in employment
9 status includes, but is not limited to, dismissal, nonreelection,
10 resignation, suspension or placement on administrative leave for
11 more than 10 days as a final adverse action, retirement, or
12 termination, a decision not to employ or reemploy.

13 (3) Mandatory reports of change of employment status of a
14 school employee pursuant to Section 44030.5, when the misconduct
15 included egregious misconduct, shall be subject to disclosure by
16 the commission under the procedures of the California Public
17 Records Act (Ch. 3.5 (commencing with Section 6250) of the
18 Government Code). This paragraph does not authorize the release
19 of personal directory information such as the address, telephone
20 number, or email of the school employee nor does it alter the public
21 disclosure requirements otherwise applicable to the commission

22 (d) Notwithstanding any other provision of law:

23 (1) Any required hearing that involves egregious misconduct
24 by a school employee holding a certificate shall be conducted
25 solely by an administrative law judge.

26 (2) The decision of the administrative law judge with regard to
27 any required hearing conducted pursuant to paragraph (1) shall be
28 the final decision regarding the discipline of the school employee.

29 (3) There shall be no restriction on a school district governing
30 board in the physical placement or duties of a school employee
31 during the pendency of a proceeding pursuant to paragraph (1).

32 (4) The final decision by the administrative law judge pursuant
33 to paragraph (1) may, on petition of either the governing board of
34 the school district or the school employee, be reviewed by a court
35 of competent jurisdiction. The court, on review, shall exercise its
36 independent judgment on the evidence. The proceeding shall be
37 set for hearing at the earliest possible date and shall take precedence
38 over other cases, except older matters of the same character and
39 matters to which special precedence is given by law.

1 (e) Nothing in this section shall require a charter school
2 governing board to follow state laws that do not otherwise apply
3 to them, or infringe upon the authority of a charter school to utilize
4 an expedited disciplinary procedure, including an alternative
5 administrative procedure, for suspending or dismissing a
6 certificated school employee for egregious misconduct.

7 44992. (a) The Office of Administrative Hearings shall give
8 priority to any proceedings involving egregious misconduct by
9 school employees.

10 (b) An administrative law judge shall only grant a continuance
11 in a proceeding involving allegations of egregious misconduct by
12 a school employee for good cause, and upon granting the
13 continuance, if any, the administrative law judge shall establish a
14 final timetable for the proceedings ensuring a reasonable time for
15 the completion of the hearing.

16 (c) The Chief Administrative Law Judge of the Office of
17 Administrative Hearings may prospectively prohibit an
18 administrative law judge from hearing a proceeding involving
19 egregious misconduct by a school employee if the chief believes
20 there has been undue delay or excessive granting of continuances
21 caused by the administrative law judge previously hearing such
22 proceedings.

23 44993. (a) If the final decision is that employment of a school
24 employee is terminated for reason of egregious misconduct, the
25 school district may recover the equivalent of all payments paid to
26 and on behalf of the school employee beginning 30 days after the
27 school district or its authorized representative has served the school
28 employee with written notice of the intent to dismiss for egregious
29 misconduct through the date of the final decision in the disciplinary
30 proceedings.

31 (b) Subdivision (a) shall only be operative in a school district
32 if that school district governing board adopts a resolution at a duly
33 noticed public hearing that it intends to exercise the authority
34 pursuant to subdivision (a) with respect to termination of specified
35 school employees and notifies all classes of affected school
36 employees in writing, and a written copy of the resolution is
37 incorporated into the school district's written notice to a school
38 employee of its intent to dismiss for the reason of egregious
39 misconduct.

1 (c) A school district may notify the Franchise Tax Board for
2 purposes of taking appropriate action to recover the equivalent of
3 the payments specified in subdivision (a) when a final decision is
4 termination for the reason of egregious misconduct. The Franchise
5 Tax Board may seek reimbursement for costs from the school
6 district for any costs incurred in assisting the district recover
7 payments pursuant to this subdivision.

8 (d) The time period beginning 30 days after service of a written
9 notice of the intent to dismiss for the reason of egregious
10 misconduct through the date of the final decision of disciplinary
11 proceedings ultimately dismissing a school employee for the reason
12 of egregious misconduct shall not constitute creditable service for
13 purposes of any public retirement system.

14 (e) Payments made to a school employee during the time period
15 beginning 30 days after service of a written notice of the intent to
16 dismiss for the reason of egregious misconduct through the date
17 of the final decision of disciplinary proceedings ultimately
18 dismissing a school employee for the reason of egregious
19 misconduct shall not constitute creditable compensation for
20 purposes of any public retirement system.

21 44994. If the final decision of the administrative law judge or
22 charter school governing board in any proceeding addressing
23 allegations of egregious misconduct by a school employee is
24 appealed to a court of competent jurisdiction, the prevailing party
25 on the appeal shall be entitled to an award of reasonable attorney
26 fees and costs for the appeal. The court in rendering its decision
27 on the appeal shall determine the award of attorney fees and costs
28 to the prevailing party.

29 44995. In addition to any other discipline or punishment
30 provided by law, any school employee who alleges that another
31 school employee has engaged in egregious misconduct knowing
32 at the time of making the allegation that the allegation was false
33 shall be subject to certificate revocation, if applicable.